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CANADA

# Debates of the Senate

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OFFICIAL REPORT  
(HANSARD)

Wednesday, March 28, 2001

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THE HONOURABLE DAN HAYS  
SPEAKER





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## THE SENATE

Wednesday, March 28, 2001

The Senate met at 1:30 p.m., the Speaker in the Chair.

[Translation]

Prayers.

### SENATORS' STATEMENTS

#### NORTH AMERICAN FREE TRADE AGREEMENT

##### SOFTWOOD LUMBER AGREEMENT— MARITIME LUMBER ACCORD

**Hon. Noël A. Kinsella (Deputy Leader of the Government):** Honourable senators, at the end of this month, a very important trade agreement between Canada and the United States will expire. This agreement deals with softwood lumber and particularly the export of softwood lumber from Canada to the United States. The region that I and many of my colleagues represent, Atlantic Canada, is particularly concerned because the American purchasers of softwood lumber coming from Atlantic Canada operate under the Maritime accord, and we have no difficulty. It is urgent that the Government of Canada, through ambassadorial exchanges, reach a memorandum of understanding within the next few days so that the Maritime accord will continue.

#### THE HONOURABLE NICK G. SIBBESTON

##### CONGRATULATIONS ON RECEIVING A NATIONAL ABORIGINAL ACHIEVEMENT AWARD FOR CONTRIBUTIONS TO ABORIGINAL COMMUNITY

**Hon. Tommy Banks:** Honourable senators, I wish to call the attention of the Senate to a spectacular event that occurred in Edmonton the weekend before last: the National Aboriginal Achievement Awards. I use the word "spectacular" in all of its meanings and to the fullest extent. It was produced by Dr. John Kim Bell, who is among Canada's most distinguished artists and among Canada's most distinguished members of the Aboriginal community. I commend all senators' attention to the program, which will air on the CBC network on April 10. It is a wonderful show, and it will make you proud to be Canadian. I particularly commend your attention to the segment of the program that was set aside to honour one of our own. On that occasion, Senator Sibbeston was honoured by his peers for his contributions to his culture, to his community, and to Canada. By being so honoured, he brings lustre to this place. I hope all senators will join in congratulating him.

**Hon. Senators:** Hear, hear!

### SUMMIT OF THE AMERICAS

#### INVOLVEMENT OF PROVINCIAL AND TERRITORIAL GOVERNMENTS

**Hon. Jean-Claude Rivest:** Honourable senators, I should like to draw your attention to the Summit of the Americas, which is to be held in Quebec City and will bring together all of the countries on the American continent, except one. I should like to focus in particular on the involvement of provincial and territorial governments in the Summit.

• (1340)

The leader of the Quebec Liberal Party, Jean Charest, made a specific request yesterday of the Canadian government that all Canadian provinces be allowed to take part in the discussions at the sectorial tables. We know that regional interests of extreme importance may be discussed. Mr. Charest reminded the National Assembly that, at the time the Free Trade Agreement was being negotiated, all provinces and territories of Canada had been able to be associated in this great undertaking by the then Prime Minister of Canada, the Right Honourable Brian Mulroney. The agreement has since gained the support of our federal Liberal friends.

[English]

#### LAWSUIT AGAINST CANADIAN ALLIANCE PARTY

**Hon. Edward M. Lawson:** Honourable senators, I know it was reported some weeks ago in the press, but I thought I should enlarge on the matter involving the settlement I received from the Reform Party on the libel action resulting from the Web site attack on ten senators in this chamber, including myself.

We filed a lawsuit. The source of their material, they indicated in their defence, was *BC Business Magazine*. They said, "You did not sue that magazine; why are you suing us?" So we sued *BC Business Magazine*, which promptly published an apology, acknowledging that the statements were false.

In the face of that event, you would think an intelligent defendant wishing to end a lawsuit would say they had better quickly resolve this. No, they then filed a further statement of defence, making further scurrilous attacks on me.

We then proceeded to court. I must tell you that we were able to resolve the dispute through the intervention of a fellow senator. When Senator St. Germain went to the Alliance Party, he said to them, "When you talk about a policy of respect for Parliament, it means respect for both Houses, the House of Commons and the Senate."



**Hon. Senators:** Hear, hear!

**Senator Lawson:** Senator St. Germain said that they cannot be sincere in advocating respect for Parliament while making character assassinations on members of the Senate. They involved not only myself but Senators Buchanan and Tkachuk, senators who would have had a "slam dunk" win in court, although neither of them pursued a lawsuit. I can understand that. It is costly and expensive, and they decided against it.

What particularly troubles me is that the Reform Party asked their insurance company to fund their defence. The insurance company said, "We insured you for policy issues, not for character assassination," and it refused. The Reform Party sued them in court. The court confirmed that the insurance company should not pay its defence. Now the matter is under appeal.

What troubles me more than anything is that if it loses the appeal, the Reform Party — Preston Manning, if he is still there — will go to the Board of Internal Economy of the House of Commons. This committee will pay legal fees and damages, as it has done repeatedly.

**Some Hon. Senators:** Shame!

**Senator Lawson:** I am concerned that one House of Parliament will pay perpetrators of character assassinations against members of this chamber, yet when I raised the issue of the costs with our Internal Economy Committee, it was missing in action. The Internal Economy Committee said that it would create a precedent.

Honourable senators, what is wrong with creating a precedent? Hundreds and thousands of precedents are created by courts, Parliament and legislatures on those occasions when they see a wrong and decide to right it. There is something wrong with the picture where the perpetrators of character assassinations against individual senators, which is an attack on this entire chamber —

**The Hon. the Speaker:** Senator Lawson, it is with genuine regret that I tell you your time is up.

**Some Hon. Senators:** More!

[Translation]

#### PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

**The Hon. the Speaker:** Honourable senators, before moving to the next item, I draw to your attention the presence of three Pages who will be here with us this week from the other place on an exchange.

May I introduce Marc-André Beaudoin. He is studying in the Faculty of Administration at the University of Ottawa and is originally from Fredericton, New Brunswick.

Mélodie Simard is originally from Kapuskasing, Ontario. She is studying in the Faculty of Social Sciences at the University of Ottawa. Her major is political science.

Finally, we have Gabrielle White, from Cornwall, Ontario, who is studying in the Faculty of Social Sciences at the University of Ottawa. Her major is political science.

On behalf of all honourable senators, I welcome you to the Senate. I hope that you will find your week with us interesting and informative.

[English]

## ROUTINE PROCEEDINGS

### STATE OF HEALTH CARE SYSTEM

INTERIM REPORT VOLUME I OF SOCIAL AFFAIRS, SCIENCE  
AND TECHNOLOGY COMMITTEE PRESENTED

**Hon. Michael Kirby,** Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Wednesday, March 28, 2001

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to table its

#### SECOND REPORT

Your Committee, which was authorized by the Senate on Thursday, March 1, 2001 to examine and report upon the state of the health care system in Canada, now tables an interim report entitled *Volume One — The Story So Far*.

Respectfully submitted,

MICHAEL KIRBY  
Chair

**Senator Kirby:** Honourable senators, pursuant to rule 97(3), I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report placed on the Orders of the Day for consideration at the next sitting of the Senate.



## PUBLIC SERVICE WHISTLE-BLOWING BILL

### REPORT OF COMMITTEE

**Hon. Lowell Murray**, Chairman of the Standing Senate Committee on National Finance, presented the following report:

Wednesday, March 28, 2001

The Standing Senate Committee on National Finance has the honour to present its

### FOURTH REPORT

Your Committee, to which was referred Bill S-6, to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers, has, in obedience to the Order of Reference of Wednesday, January 31, 2001, examined the said Bill and now reports the same with the following amendments:

1. *Page 5, Clause 9:* Add after line 25, the following:

“(5) An employee who has made a request under paragraph (1)(b) may waive the request or any resulting right to confidentiality, in writing, at any time.

(6) Where the Commissioner is not prepared to give an assurance of confidentiality in response to a request made under paragraph (1)(b), the Commissioner may reject and take no further action on the notice.”.

2. *Page 7, clause 14:* Replace line 34 with the following:

“(4) Information related to an investigation is confidential and shall not be disclosed, except in accordance with this Act.

(5) The Commissioner shall provide the”.

3. *Page 8, clause 17:* Replace lines 30 and 31 with the following:

“(c) the number of notices rejected pursuant to sections 9 and 12;”.

4. *Page 10, clause 20:* Replace lines 25 to 30, with the following:

“20. (1) Except as authorized by this Act or any other law in force in Canada, no person shall disclose to any other person the name of the employee who has given a notice under subsection 9(1) and has requested confidentiality under that section, or any other information the disclosure of which reveals the employee's identity,

including the existence or nature of a notice, without the employee's consent.”.

5. *Page 11, new clauses 23 and 24:* Add after line 19, the following:

### “REVIEW

23. (1) On the expiration of three years after the coming into force of this Act, it stands referred to such committee of the Senate, of the House of Commons or of both Houses of Parliament as may be designated or established to review its administration and operation.

(2) Within one year after beginning a review under subsection (1) or within such further time as the Senate, the House of Commons or both Houses of Parliament, as the case may be, may authorize, the committee shall submit a report on the review.

### CONSEQUENTIAL AMENDMENT

#### *Access to Information Act*

**24. Schedule II of the Access to Information Act is amended by adding the following in alphabetical order:**

Public Service Whistleblowing Act	section 10, subsection
<i>Loi sur la dénonciation dans la</i>	14(4) and section 20”.
<i>fonction publique</i>	

Respectfully submitted,

LOWELL MURRAY  
*Chairman*

**The Hon. the Speaker:** When shall this bill be read the third time?

On motion of Senator Murray, bill placed on the Orders of the Day for consideration at the next sitting of the Senate.

[Translation]

### ADJOURNMENT

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Thursday, March 29, 2001, at 1:30 p.m.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

[English]

• (1350)

**AGRICULTURE AND FORESTRY**COMMITTEE AUTHORIZED TO MEET  
DURING SITTING OF THE SENATE

**Hon. Leonard J. Gustafson:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move, seconded by Senator Fairbairn:

That the Standing Senate Committee on Agriculture and Forestry have the power to sit on Thursday, March 29, 2001, at 2 p.m., for the purpose of hearing from the Chief Canadian Negotiator of the Free Trade Area of the Americas, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Some Hon. Senators:** No.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, it was my understanding that this committee was going to ask for leave. We were prepared to grant it, but I understood they wanted to sit at 3:30 p.m. Perhaps we could have an explanation as to why the committee now wants to sit at 2 p.m.

**Senator Gustafson:** It was my understanding that as the Senate is to sit at 1:30 p.m. tomorrow, members of the committee could come and be counted at 1:30 and then proceed to the committee at 2 p.m. That was the information I received.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

**CONFERENCE OF MENNONITES IN CANADA**PRIVATE BILL TO AMEND ACT OF INCORPORATION—  
PRESENTATION OF PETITION

**Hon. Richard H. Kroft:** Honourable senators, I have the honour to present a petition from the Conference of Mennonites of Canada, of the City of Winnipeg in the Province of Manitoba, praying for the passage of an act to amend the Act of Incorporation of the Conference of Mennonites in Canada.

**QUESTION PERIOD****VETERANS AFFAIRS**MERCHANT NAVY—EXCLUSION OF BRITISH WEST INDIAN SEAMEN  
FROM COMPENSATION PROGRAM

**Hon. Donald H. Oliver:** Honourable senators, my question is directed to the Leader of the Government in the Senate. It arises from a story in the *Ottawa Citizen* of Monday, March 26, of this year. The headline read: "Canada excludes black seamen from merchant navy compensation." The news story, by Muriel MacDonald, stated that Canadian Black West Indian seamen are being excluded from compensation for lost post-war benefits granted wartime merchant seamen, a program that was announced on February 1, 2000. The story indicated that they are disqualified for not being residents of Canada during their war service and immediately after the war.

As the news story said, and as honourable senators will know, these British West Indian seamen lived in Canada for more than half a century, but they could not obtain citizenship because of Canada's unofficial wartime immigration policy against "Negroid, coloured or mixed race."

Surely these antiquated policies of bias are not being extended to compensation schemes in the 21st century. These seamen crewed Canadian National Steamship "lady boats" and Canadian merchant marine ships. Some were injured in action. The names of those killed in action are listed on the Merchant Navy Book of Remembrance in the Peace Tower on Parliament Hill.

Will the honourable leader undertake to determine whether the Canadian government will continue to maintain biased policies against these West Indian seamen? Will she take the steps necessary to ensure that they will receive their rightful compensation for post-war benefits?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the senator for his question. Clearly, this is a very serious issue. The bill that was passed was based on residency. I would hope that "residency" would be given the broadest possible definition.

I will make inquiries on behalf of the honourable senator to learn whether there is any means by which these individuals can be duly recognized.

**PRIME MINISTER'S OFFICE**DUTIES OF MR. DAVID MILLER AS SENIOR ADVISER—  
POSSIBLE CONFLICT OF INTEREST

**Hon. J. Michael Forrestall:** Honourable senators, my question is directed to the Leader of the Government in the Senate. A Mr. David Miller was employed as a registered lobbyist for Eurocopter Canada Limited from July 18, 1997, until March 22, 2001 — six days ago. On March 23, 2001, he became a senior adviser to the Prime Minister of Canada.



Will the minister please attempt to find out what the duties of Mr. Miller are and will she share that information with us? Will she tell us whether he provides service and advice to the Prime Minister on the issue of the maritime helicopter program?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, David Miller had a long and distinguished career as an adviser to my party. Following that, he went into the consultancy business for a short time.

I am delighted that Mr. Miller has become a senior adviser to the Prime Minister of Canada because he is from Western Canada and has a very good understanding of issues, particularly those in the province of Saskatchewan. I will enquire specifically as to whether he will be giving advice on the maritime helicopter program.

**Senator Forrestall:** Honourable senators, I trust that the Leader of the Government in the Senate will respond to my question, and I will proceed to ask a series of questions to which I will request responses in a day or so.

Is there not a potential conflict of interest in that one day Mr. Miller, who I have no doubt is a great Western Canadian, is a lobbyist for Eurocopter and the next day he is a senior adviser to the Prime Minister?

**Senator Carstairs:** Honourable senators, I thank the honourable senator for that question. Clearly, if Mr. Miller was hired in a capacity to serve the Prime Minister of Canada, it would have been done on the basis of his very strong qualifications for that position. As to whether there is a conflict of interest, I will investigate.

• (1400)

## NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS—  
BALLARD POWER SYSTEMS—INVOLVEMENT OF  
MR. PIERRE LAGUEUX AND MR. RAYMOND STURGEON

**Hon. J. Michael Forrestall:** Honourable senators, I will try again. Mr. Pierre Lagueux, former Assistant Deputy Minister, Materiel, with the Department of National Defence, is now a lobbyist for Ballard Power Systems. Ballard makes power systems for buses. By coincidence, Raymond Sturgeon, his predecessor, is also a lobbyist for Ballard, as is a former Vice-Chief of the Defence Staff. That is a lot of high powered help for bus fuel cells. Can the minister tell us if they have any connection with Eurocopter and the maritime helicopter contract?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I must tell the Honourable Senator Forrestall that I have absolutely no knowledge of a connection, but I will endeavour to find out if there is any connection, one with the other.

**Senator Forrestall:** Mr. Lagueux was an attendee at the senior Privy Council staff meetings on the maritime helicopter

project held on January 28, 1999. Ballard Power Systems is 25 per cent owned by DaimlerChrysler. DaimlerChrysler owns 30 per cent of Eurocopter.

Will the minister tell us if these gentlemen are lobbying or are involved in supporting Eurocopter's agenda with the government? Do they have anything to do, directly or otherwise, with the \$1.5 billion to be put into the Deputy Prime Minister's riding as part of the industrial spinoff with respect to that contract?

**Senator Carstairs:** Honourable senators, I will try, again, to make any connection, if one exists, one with the other. However, I would say to the honourable senator that it has been my experience that people move between government and business. The majority of them — perhaps not every single one, but certainly the greater number of them — no matter whether they serve this government or have served previous governments, are men and women of the highest integrity.

## TREASURY BOARD

GRACE PERIOD FOR EMPLOYEES MOVING  
FROM PUBLIC SERVICE TO PRIVATE SECTOR

**Hon. A. Raynell Andreychuk:** Honourable senators, my question is a follow-up to Senator Forrestall's question. I understood that a grace period had to be observed before one could move from a high position in the bureaucracy to the role of government adviser. I am surprised to see that this grace period no longer exists. Is that correct?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I am of the same understanding that the grace period exists. However, I believe it applies when one moves from government to business. I am not sure if it also applies when one moves from business to government.

**Senator Forrestall:** What are these lobbyist firms? Is that not business?

## FOREIGN AFFAIRS

CIVIL WAR IN SUDAN—  
INVOLVEMENT OF TALISMAN ENERGY INC.

**Hon. A. Raynell Andreychuk:** Honourable senators, I would appreciate receiving answers to the questions that I posed yesterday on Sudan, as many people are asking what the Canadian foreign policy is towards Sudan presently. As senators can appreciate, the Human Rights Commission is sitting, but we cannot seem to get the position of the Canadian government with respect to Sudan and the proposals in the resolutions that Canada either supports or does not support. I would appreciate receiving that information.

Honourable senators, I should like to know whether the Canadian government advised Talisman Energy Inc. that it should not go into Sudan. If that is the case, could we find out when that advice was given to Talisman and by whom?

**Hon. Sharon Carstairs (Leader of the Government):**

Honourable senators, let me begin with the first part of the question. I attempt to get answers back to honourable senators as rapidly as I possibly can, but there is a process. The debates in this chamber are monitored not only by my staff but also by PCO staff, if the debates impact on them. The questions are immediately sent to the various departments. We then follow up in the hopes that we can get them sooner rather than later. All I can do is my very best in attempting to get answers back to senators.

Honourable senators, I will give you further information with respect to Senator Wilson, who provided me with some documentation yesterday. I made sure that the documentation also went over to the Ministry of Foreign Affairs as soon as possible so that we could get as much information as it was possible to get.

I ask the Honourable Senator Andreychuk to bear with me. I will get the answers as fast as I possibly can. As soon as I receive answers, I table them through my deputy leader as quickly as possible.

As to the honourable senator's second question about whether anyone gave advice to Talisman to remain out of Sudan, I do not know if it was ever given that advice. Quite frankly, it is a frequent situation that when a corporation decides to go into a foreign country, it does so without contacting the government to ask whether the government looks favourably upon the corporation's engagement in that particular country. A private company does not ask the Canadian government to provide a list of things that it can or cannot do in the operation of its business — in this case, a publicly listed company.

As to the steps that the Canadian government is taking with respect to Sudan, the government does try to ensure that its involvement in Sudan does not place Canadians at risk. The Canadian government has urged Talisman Energy to actively engage in and implement initiatives that have a positive impact on human rights and labour standards. The government expects Talisman Energy to take every precaution to ensure that it will not be directly or indirectly involved in actions that could increase the suffering of the civilian population in Sudan.

**Senator Andreychuk:** The Minister of Foreign Affairs, the department and Talisman officials at that time stated that there were discussions between the government and Talisman. My question is pointed in particular to those discussions, as there appears to be some difference of opinion.

Did the Canadian government advise Talisman not to go into Sudan? If so, on what date and by whom? What is the Canadian position today with respect to businesses that wish to enter Sudan and for those that continue to work there?

**Senator Carstairs:** Honourable senators, I will try to get a date, if a date exists. I will try to get the name of an individual, if

such an individual exists. I will try to learn what specific advice, if requested, is given to companies that wish to do business in the Sudan.

**INTERNATIONAL TRADE****UNITED STATES—RENEWAL OF SOFTWOOD LUMBER AGREEMENT—MARITIME LUMBER ACCORD****Hon. Noël A. Kinsella (Deputy Leader of the Opposition):**

Honourable senators, my question is to the Leader of the Government in the Senate. There is a looming softwood lumber crisis in that the current Canada-U.S. agreement expires at midnight on March 31. Should the government be unable to reach an agreement before the expiration of the present softwood lumber agreement, is it prepared to secure an agreement through ambassadorial memoranda or some such vehicle in order to keep the Maritime accord intact, which is not a problem for U.S. purchasers of softwood lumber?

**Hon. Sharon Carstairs (Leader of the Government):**

Honourable senators, the softwood lumber issue, as the honourable senator well knows, is not an easy one. It greatly impacts on the province of British Columbia, but impacts are also felt in Ontario, Quebec, the Atlantic provinces and, to some degree, even in Alberta. There is consensus among the industry and all of the provinces covered by the agreement not to renew or extend this quota-based agreement with the United States.

As honourable senators know, the United States has taken Canada to international tribunals on a number of occasions. Each time the Canadian government has won. Each time the Americans have accepted that on a temporary basis and have gone right back to the tribunal with yet another issue.

• (1410)

With respect to the Maritimes, which is a particularly interesting issue because in Atlantic Canada, as I understand, the woodlots are privately owned as opposed to the woodlots in Western Canada, which are almost exclusively owned by the province, and therefore the dispute about stumpage comes into effect. The negotiations are ongoing, and I do not think it would be to anyone's advantage to talk about hypothetical situations at this particular point in time.

**Senator Kinsella:** Honourable senators, let me be specific. Within the context of Canada-U.S. agreements on softwood lumber, for the past 20 years there has been a particular sub-agreement regarding softwood coming from the provinces of New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland. It is known as the Maritime Accord. As the honourable senator indicated, that is basically because private woodlot owners are the growers, and it is from the private woodlots where the softwood is harvested, milled and then exported.



In each of the agreements, because of the nature of our softwood industry, the Maritime provinces have been exempted from the regime as it occurs in other parts of Canada. This is not unusual given the great diversity of our country. The concern in the Maritimes is that between now and Saturday night, at least at the level of an ambassadorial exchange, we would like to see agreement on a continuance of the Maritime accord, with which the Americans have no difficulty. Could the ministry not at least do that in order to mitigate against damages that would be forthcoming should an overall agreement not be reached between now and Saturday night?

**Senator Carstairs:** I can assure the honourable senator that the government is doing everything to ensure fairness and equity, no matter where the problem exists in the country. The Maritime Lumber Accord has been well respected, but there have been charges from south of the border that we are trying to sneak lumber in through that accord. The Maritime Lumber Accord specifically requires a certificate of origin so that there is no question that the lumber shipped from the Atlantic region comes from the Atlantic region. There is no question about that whatsoever. However, we are playing with people who, quite frankly, in some cases, are using each and every opportunity to put specious arguments on the table with respect to the whole issue of softwood lumber.

I can assure honourable senators that the minister is on top of this file. He is working carefully with all of the players involved, including the Maritime lumber operators. Hopefully, some resolution can be found.

## FINANCE

### EFFECT OF CURRENT DEVALUATION OF DOLLAR— PROPER VALUATION LEVEL

**Hon. Gerry St. Germain:** Honourable senators, my question is to the government leader as well. It goes back to the question I asked the other day about the value of the Canadian dollar. At the time some senators were asking questions about the policy of the government and the fact that it basically advocates a low-valued Canadian dollar in relation to the American dollar. Has the minister been able to come up with how low the dollar should really go? Does the leader not think that the low dollar is also having an impact on the ability to reach a free trade agreement with the United States in softwood lumber?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, let me refute Senator St. Germain's opening statement completely. This government is not an advocate of a low dollar. The economy of the world determines the value of currencies. To suggest that this government advocates a low dollar is simply not correct.

In terms of whether the low dollar prevents free trade, I would suggest that south of the border they quite like the benefits of free trade on some occasions when better prices suit their interests. On other occasions they do not. When they do not, they take us before trade tribunals, and they consistently lose.

[ Senator Kinsella ]

**Senator St. Germain:** Honourable senators, the Leader of the Government has still not answered the question. The honourable leader says the government is not an advocate of a low dollar. However, when the Prime Minister met with the governors of the northeastern states, he advocated that they come to Canada to develop their industries because of the value of the dollar and the lower cost of labour. If that is not advocating a low dollar, I do not know what is. It sounds to me like the government is supportive of a reduced dollar as compared to that of the United States.

In the minister's comments the other day, she made mention of the fact that if the party to which I am associated were to implement their flat tax, the dollar would go to absolutely nothing. I do not know why the minister would say that when Alberta has adopted a flat tax. I can tell honourable senators one thing: The economy in Alberta is one to get excited about. Perhaps the Leader of the Government in the Senate could comment on that as well.

**Senator Carstairs:** Honourable senators, we are all excited about the economy of Alberta. One of the exciting aspects of the economy of Alberta is that the Americans are now importing more oil from Canada than they are from Saudi Arabia, which puts us in a most beneficial position.

Yes, they are. I see the Honourable Senator Carney nodding her head.

It is now a difference of 1.7 billion to 1.6 billion. The Americans are, in fact, taking more oil from the province of Alberta than they are from Saudi Arabia.

Honourable senators, the reality is that it is the marketplace that determines the value of the dollar. If the honourable senator from British Columbia wants the Prime Minister's advocacy, he need look no further than his meeting with the President of the United States, during which he talked about dealing with us fairly on the softwood lumber deal.

## INTERNATIONAL TRADE

### UNITED STATES—RENEWAL OF SOFTWOOD LUMBER AGREEMENT—EXPORT TAX—COUNTERVAILING DUTY

**Hon. Pat Carney:** Honourable senators, my question is for the Leader of the Government in the Senate. First, I should like to tell my honourable colleague that when I was Minister of International Trade I was assured by the Americans that we would be treated fairly on the softwood lumber file, but their idea of fair is not one that meets Canadian values.

I should like to ask the honourable leader what her government's reaction is to the imposition of an export tax on Canadian exports of softwood lumber, considering the fact that the Americans are talking about a 40 per cent countervail? Under the countervail, the money collected, which would be \$4 billion, would remain in the United States or would be returned to the American producers, whereas an export tax would keep the money in Canada and it would, if it follows tradition, be returned to the provinces.

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for her question. The export tax, which has been talked about by some of the lumber owners in the Province of British Columbia, is not greeted with great enthusiasm by the lumber owners of Atlantic Canada or, indeed, Ontario, whose exports also must be treated in a fair and equitable manner. Thus, I do not, at this point, anticipate that an export tax will be used as a vehicle by which to solve this dispute.

**Senator Carney:** I wish to thank the minister for her answer. I should like to know what action the Canadian government is prepared to take against those American companies operating in Canada who sign a countervail against Canadian producers?

**Senator Carstairs:** The honourable senator is asking a hypothetical question and I am not prepared to give a hypothetical answer.

**Senator Carney:** Honourable senators, I have a supplementary question. When the Americans do impose a countervail, will the honourable leader provide the answer in this house?

**Senator Carstairs:** The honourable senator is presuming that they will, and I am hoping that fairness will rule the day.

• (1420)

**Senator Carney:** Is that a refusal? I have asked a serious question. I have the names of those American forest companies that own controlling interests in Canadian companies and that are expected to sign a countervail against our lumber exports. In the meantime, these companies are exporting our logs and with them, our jobs to American mills.

Honourable senators, my question is serious. If my colleague cannot answer at this time, which I understand, I ask that the leader give the answer in this house at the next opportunity.

**Senator Carstairs:** We must realize that there is a countervailing duty timetable.

**Senator Carney:** It starts Monday.

**Senator Carstairs:** It could go into effect as early as April 2, 2001, because the current agreement concludes at the end of March. However, it would likely be October 2001 before the countervail could be dealt with effectively.

Thus, the hypothetical question of how the government would react to something that might happen is being asked. It has not happened yet, and it is our hope that it will not happen. If it does not happen, then the government presumably need not have a reaction. If it does happen and the government takes an action, I will be the first one to bring that information to the chamber.

## ORDERS OF THE DAY

### APPROPRIATION BILL NO. 3, 2000-01

#### THIRD READING

**Hon. Isobel Finnerty** moved the third reading of Bill C-20, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001.

Motion agreed to and bill read third time and passed.

### APPROPRIATION BILL NO. 1, 2001-02

#### THIRD READING

**Hon. Isobel Finnerty** moved the third reading of Bill C-21, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002.

Motion agreed to and bill read third time and passed.

### PROCEEDS OF CRIME (MONEY LAUNDERING) ACT

#### BILL TO AMEND—REPORT OF COMMITTEE—SPEAKER'S RULING

On the Order:

Third reading of Bill S-16, to amend the Proceeds of Crime (Money Laundering) Act.

**The Hon. the Speaker:** Honourable senators, on Thursday, March 22, 2001, Senator Wiebe, on behalf of Senator Kolber, presented the second report of the Standing Senate Committee on Banking, Trade and Commerce dealing with Bill S-16, to amend the Proceeds of Crime (Money Laundering) Act.

[Translation]

Since the bill was reported without amendment, the report stood adopted without motion under rule 97(4). When I, as Speaker, asked when the bill should be read a third time, the Deputy Leader of the Government in the Senate, Senator Robichaud, moved that it be placed on the Orders of the Day for consideration at the next sitting.

[English]

At the appropriate time, Senator Kinsella raised a point of order based on two principles. First, he questioned whether the bill was properly reported. Second, he sought clarification as to whether Senator Robichaud had acted correctly in moving the motion to set the date for third reading.

On the first point, Senator Kinsella expressed the view that the practice has been that when a chair is not available to perform his or her functions, it falls upon the deputy chair to do so. He asked whether the Banking Committee had authorized Senator Wiebe to present the report. Senator Kinsella's fundamental concern was whether any member of a committee may present a committee report.



[Translation]

Senator Kinsella's second concern was whether Senator Robichaud acted properly in moving the motion to set the date for third reading. He noted that rule 97(4) provides that it is the senator in charge of the bill who should move such a motion, and suggested that, since Senator Robichaud was not the sponsor, he should not have moved that motion.

[English]

A number of senators then spoke to the issue. Senator Robichaud quoted rule 97(1), which deals with the presentation of committee reports. That rule states:

A report from a select committee shall be presented by the chairman of the committee or by a Senator designated by the chairman.

Senator Robichaud felt that Senator Wiebe had acted properly, since Senator Kolber had asked him to act on his behalf. As to the second matter raised by Senator Kinsella, Senator Robichaud noted that the bill in question was government legislation. He suggested that as Deputy Leader of the Government, he could move the motion to set the date for third reading.

Senator Wiebe then intervened to confirm that Senator Kolber had asked him to present the report. Subsequently, Senators Tkachuk, Carstairs, Lynch-Staunton and Taylor also participated in the debate, which can be found on pages 422 to 424 of the *Debates of the Senate*. I wish to thank all honourable senators for their contribution to the consideration of this issue.

Senator Kinsella's point of order touches directly on section 1 of rule 97, as quoted above, and section 4 of the same rule, which states:

[Translation]

When a committee reports a bill without amendment, such report shall stand adopted without any motion, and the Senator in charge of the bill shall move that it be read a third time on a future day.

[English]

With regard to the first element of the point of order, which relates to the propriety of Senator Wiebe presenting the report, similar issues have been raised in the past.

On February 24, 1998, Senator Callbeck presented reports of the Banking Committee on behalf of Senator Kirby, the committee's chair. Senator Kinsella asked why the chair or deputy chair had not presented the report. Senator Callbeck replied that she had been asked by Senator Kirby to present the report. Senator Kinsella accepted this response, although he indicated that he did not view it as a precedent.

On December 8, 1999, Speaker Molgat dealt with a point of order raised the previous day by Senator Kinsella. In his point of order, Senator Kinsella questioned, among other things, whether the Banking Committee had adopted a motion to report Bill S-3,

an income tax convention bill, and whether the committee had authorized Senator Hervieux-Payette to report the bill.

At that time, Senator Kolber, the chair of the committee, noted that he had authorized Senator Hervieux-Payette to act on his behalf. Speaker Molgat made a point of noting that, as Speaker, he had no authority to question whether the senator presenting the report had been designated and that he must depend upon the committee chair to have done so. In light of rule 97(1), Speaker Molgat did not find that Senator Kinsella's point of order had been established.

As noted previously, in the present case, Senator Wiebe also confirmed to the house that Senator Kolber had asked him to present the report as rule 97(1) allows. I should like to confirm my support for Speaker Molgat's position. In my opinion, the statement by Senator Wiebe was not strictly necessary. If an honourable senator declares that he or she is doing something on behalf of another, this declaration should be taken in good faith and should only become an issue if the designator were to indicate that there had been a misunderstanding.

• (1430)

Pursuant to rule 97(1), I therefore find that the report to the Senate was properly presented.

I will now turn to the second element of the point of order, as to whether Senator Robichaud acted properly by moving the motion to set the date for third reading of Bill S-16. In relation to rule 97(4), I would note that our rules do not provide a clear definition of "the Senator in charge of the bill." In the case of a government bill such as S-16, the Leader of the Government in the Senate is ultimately responsible for it — indeed, that position appears on the cover of the bill. In keeping with rule 4(d), the deputy leaders on both sides often act on behalf of their respective leaders in this chamber.

[Translation]

In addition, the senator serving as sponsor of a bill — who begins debate at second reading — also has a high degree of involvement throughout the process, often including moving the motion to set the date for third reading. Finally, in matters resulting directly from a committee's work, as in this case, the committee chair may also be involved.

[English]

Senate practice with respect to moving the motion to set the date for third reading reflects the variety of senators who may be involved in the process. For government bills, there have been many cases in which a senator other than the Leader of the Government has moved this motion. The Deputy Leader of the Government has often moved this motion.

To take a few examples, during the Second Session of the Thirty-sixth Parliament, the Deputy Leader of the Government moved this motion for Bills C-10, C-22 and C-26. During that same session, chairs of committees reporting government bills sometimes moved the motion in question. This was the case, for example, with Bills S-18, C-2 and C-7.

Therefore, while the rules do not define the phrase "Senator in charge of the bill," Senate practice would suggest that, at least for legislation, the Leader of the Government, the Deputy Leader of the Government, the sponsor of the bill or the designate can move the motion to set the date for third reading.

Honourable senators, in light of the *Rules of the Senate* and Senate practice, I find that the second element of this point of order has also not been established. Bill S-16 was properly reported and the motion to set the date for consideration at third reading was properly moved.

We will now proceed to the order.

[Translation]

BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

**Hon. George J. Furey** moved the third reading of Bill S-16, to amend the Proceeds of Crime (Money Laundering) Act.

He said: Honourable senators, I am delighted to have the opportunity to speak today at third reading of Bill S-16, to amend the Proceeds of Crime (Money Laundering) Act.

[English]

Honourable senators, the predecessor to Bill S-16 was Bill C-22, which became law last June. The enactment of that bill was an important milestone in Canada's legislative framework for fighting organized crime and money laundering. It strengthened the previous statute by adding measures to improve the detection, prevention and deterrence of money laundering in Canada.

As a member of both the G7 and the Financial Action Task Force, FATF, Canada had committed to improving its anti-money laundering regime. It was important, then, that we be seen by our international partners to be making progress on this front, particularly since the FATF was publicly listing countries with deficient anti-money laundering controls right around the time that our legislation was being passed.

The timely passage of Bill C-22 brought our anti-money laundering legislation into line with international standards. At the same time, our domestic law enforcement agencies were in need of better enforcement tools here at home, and Bill C-22 also responded to their needs. As a result, Canada now has a system that provides for the mandatory reporting of suspicious transactions and the reporting of large cross-border movements of cash or monetary instruments, such as travellers' cheques, to the Canada Customs and Revenue Agency.

Bill C-22 also established the new Financial Transactions and Reports Analysis Centre of Canada, FinTRAC, which officially came into being on July 5, 2000. FinTRAC will analyze reports

and provide information to police to assist them in the investigation and prosecution of money laundering offences.

FinTRAC is subject to the many privacy safeguards contained in the act. These safeguards are supported by criminal penalties for any unauthorized use or disclosure of personal information under FinTRAC's control. In addition, FinTRAC is subject to the federal Privacy Act and the protections therein.

In summary, honourable senators, the new act responded to the domestic law enforcement community's need for additional means of fighting organized crime by more effectively targeting the proceeds of crime. It responded to Canada's need to meet its international responsibilities in the fight against money laundering, and it did so while providing safeguards to protect individuals' privacy.

When the Standing Senate Committee on Banking, Trade and Commerce considered Bill C-22, committee members believed that the act would be further strengthened and they suggested amendments to certain provisions. The Secretary of State for International Financial Institutions made a commitment to the committee to introduce legislation to address a number of these concerns. Bill S-30 was subsequently introduced, but it died on the Order Paper when the election was called last fall.

This is the same bill that we considered last fall, and because of this, I urge honourable senators to pass it quickly so that we may proceed to other business.

The amendments contained in Bill S-16 relate to four specific issues. The first deals with the process for claiming solicitor-client privilege during a FinTRAC audit. I should mention that FinTRAC is authorized to conduct audits to ensure compliance with the act. At present, when conducting a compliance audit of a law office, FinTRAC must provide legal counsel with reasonable opportunity to claim solicitor-client privilege on any document it possesses at the time of the audit.

The amendment in this bill pertains to documents in the possession of someone other than a lawyer, and it requires that this person be given a reasonable opportunity to consult a lawyer in order to make a claim of solicitor-client privilege.

The second amendment ensures that nothing in the act will prevent the Federal Court of Canada from ordering the Director of FinTRAC from disclosing certain information as required under the Access to Information Act or the Privacy Act. It was the intent of the original Bill C-22 that the recourse of individuals to the Federal Court of Canada be fully respected. This amendment ensures that this will be done.

The third amendment more precisely defines the kinds of information that may be disclosed to the police and other authorities specified in the act. It clarifies that the regulations setting out this information may only cover similar identifying information regarding the client, the institution and the transactions involved.



[Translation]

Finally, the last amendment guarantees that all reports and information in the possession of the Financial Transactions and Reports Analysis Centre of Canada are destroyed after a prescribed period.

[English]

Information that has not been disclosed to the police or other authorities must be destroyed by FinTRAC after five years. Information that has been disclosed to the police or other authorities must be destroyed after eight years.

• (1440)

In conclusion, honourable senators, these four amendments complement the existing legislation and, indeed, improve it. Bill C-22 addresses this need for more effective tools to combat money laundering and organized crime. Together with these four amendments it does so in a manner that protects individual privacy. The legislation will go a long way to help deter and detect money laundering and allow Canada to more effectively cooperate internationally in combating this global problem.

Honourable senators, I encourage you to give your support to this bill.

On motion of Senator Kelleher, debate adjourned.

## QUESTION OF PRIVILEGE

### UNEQUAL TREATMENT OF SENATORS—SPEAKER'S RULING

**The Hon. the Speaker:** Honourable senators, I should like now to give a ruling arising out of a question of privilege which was raised yesterday by the Honourable Senator Carney.

At the conclusion of the Orders of the Day, Senator Carney rose on a question of privilege raised in accordance with the provisions of rule 43. The essence of Senator Carney's argument was that her privileges were breached when leave was denied when she appealed to the Senate to allow her to extend her remarks past the 15 minutes allowed by the *Rules of the Senate*. This incident came to pass on Thursday, March 15, 2001, while Senator Carney was speaking on an inquiry of which she had previously given notice. Senator Carney explained that the denial of leave was inequitably applied to her in that other speakers had been allowed to extend their remarks, while her request for leave to continue speaking had been denied.

[Translation]

Senator Carstairs responded to Senator Carney's remarks by referring to the tests laid out in the *Rules of the Senate* in rule 43(1), which aid us in determining the validity of a claim that privileges have been breached. Specifically, Senator Carstairs argued that, in her opinion, Senator Carney had not met the test of raising this question at the earliest opportunity, as

specified in rule 43(1)(a), since three sitting days had passed since March 15 before Senator Carney raised this matter under rule 43. Second, Senator Carstairs argued that privilege cannot be breached by the observation of, and strict adherence to, the *Rules of the Senate*. Senator Carstairs and Senator Robichaud both pointed out in their remarks that Senator Carney had already been extended the courtesy of leave earlier to allow her to get to her item of business ahead of other senators who held positions of priority on the Order Paper.

[English]

Finally, Senator Kinsella and Senator Grafstein had an exchange on the principle of freedom of speech and the individual rights and immunities of senators.

Honourable senators, as I indicated at the conclusion of debate on this matter, I am obliged by rule 43(12) to explain my ruling, using references to any rule or written authority relevant to the case. I am also obliged by rule 43 to ensure that the question of privilege being raised meets certain tests. Having considered the remarks made by those senators who intervened, to whom I extend my thanks for their assistance, and having consulted the authorities and precedents, I am prepared to give my ruling.

Senator Carney has used the provisions of rule 43 to bring her question of privilege to the Senate. I should like to remind honourable senators that rule 43 exists to give precedence in the business of the Senate to this type of question, underlining the importance all Westminster-style parliaments give to matters of privilege. As a result, any matter raised using these provisions must meet certain conditions precedent to being afforded that priority.

In my judgment, this matter was not raised at the earliest possible opportunity, according to rule 43(1)(a). While I am sympathetic to the medical limitations cited by Senator Carney, three sitting days did, indeed, pass before the matter was raised. The rules do not reveal an exemption from this imperative for any reason, medical or otherwise.

Further, I am not convinced that, according to rule 43(1)(b), this matter directly concerns the privileges of Senator Carney. It is true that, as Senator Kinsella argued, freedom of speech is an unquestioned privilege of any member of Parliament. However, in the same authority to which Senator Kinsella referred, just a little farther down the same page, on page 51 of Marleau and Montpetit's, *House of Commons: Procedure and Practice*, another privilege is listed, that of the privilege of a House of Parliament to regulate its own internal affairs. In fact, in Beauchesne's, sixth edition, paragraph 33 states:

The most fundamental privilege of the House as a whole is to establish rules of procedure for itself and to enforce them. A few rules are laid down in the *Constitution Act*, but the vast majority are resolutions of the House which may be added to, amended, or repealed at the discretion of the House.

In Marleau and Montpetit, pages 71 to 79, the freedom of speech is further explained. If I may paraphrase, freedom of speech is not necessarily the freedom to speak. The principle behind the freedom of speech is that a member of Parliament, while speaking within what is defined as a proceeding of Parliament, cannot be prosecuted through either civil or criminal means for what has been said. This principle allows members of Parliament to express themselves freely on any matter being debated, without fear of legal consequences. Since Senator Carney is not arguing that she is being punished legally for what she was saying, I do not believe her freedom of speech privileges have been breached.

As for equity of treatment by colleagues as a privilege, I cannot find anything in the authorities that suggests that one must be treated by one's colleagues exactly the same as one perceives others are treated in the application of such devices as leave. While Senator Carney may have a grievance over how she perceives she has been treated by her colleagues, there does not appear to be a related privilege she may claim.

Accordingly, I do not find that Senator Carney has met the particular tests of raising the matter at the earliest opportunity or that denial of leave directly affects her privileges. Therefore, I do not find that a *prima facie* case of privilege has been established.

In closing, if I may, rule 43(1)(c) also asks if a question raised as a matter of privilege could possibly be remedied by another parliamentary process. In the hope that it is of use to Senator Carney and other senators, I would suggest to her that the question of time limits on speeches and of leave to extend remarks are both elements of our rules of procedure. We do have a committee that concerns itself with these questions. Senator Carney might consider at some time in the future moving a motion to have the Standing Committee on Privileges, Standing Rules and Orders study this question, as well as that of medical exemptions to raising questions of privilege. I should also note that the Speaker's Advisory Committee has in the past, and most likely will in the future, consider the issue of the adequacy of 15-minute speeches and the question of granting leave.

I see that Senator Carney is rising. Is the honourable senator challenging the ruling?

**Hon. Pat Carney:** No, of course not, but I am asking for clarification.

**The Hon. the Speaker:** Honourable senators, I wish I could accommodate the Honourable Senator Carney. I certainly would be pleased to receive her question and answer it privately. However, our rules are very strict on this matter. The honourable senator is entitled, as is any senator, to challenge the ruling, in which case I put it to the chamber and the chamber will have a division. However, it is not debatable. I cannot hear any senator on the ruling.

**Senator Carney:** Honourable senators, I rise on a point of order. I should like to ask: Can that include a point of clarification?

**The Hon. the Speaker:** On that point of order, Senator Carney, by our tradition and by our rules, the rulings must stand by themselves. In this place — and I need not remind honourable senators of this — a ruling of a Speaker of the Senate can be challenged and can be overturned on a vote. However, I gather you are not challenging the ruling and, accordingly, I must proceed with Orders of the Day.

## FEDERAL NOMINATIONS BILL

### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Stratton, seconded by the Honourable Senator Cohen, for the second reading of Bill S-20, to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions.—(*Honourable Senator Banks*).

**Hon. Tommy Banks:** Honourable senators, I rise to speak in opposition to Bill S-20, which was introduced by Senator Stratton. Taking my cue from yesterday's speech of Senator Murray in respect of Bill S-12, I must tell you that I am speaking entirely for myself. I have not been asked to speak to this bill, and I have not sought the advice of others.

My concerns are about the effect of the bill and consist mainly of the fact that it bumps up against and seems to come dangerously close to infringing on questions of the Constitution and of prerogatives that are set out clearly in the Constitution.

I am very much in favour of more transparency in the appointment process. However, I feel it must be achieved in ways that are different from those that are set out in Senator Stratton's bill. We must not make appointments, particularly of Supreme Court judges, into politicized processes.

Of the concerns that I have, one is the public lobbying that will almost certainly occur if the proposed process is put into place. This is conduct that, in the words of former Chief Justice Antonio Lamer would be "bound to tarnish the court's good image." We have been inundated with images and literature on the processes in the United States. These have engendered novels, exposés, and dramatic television series and scandals, and have provided endless fodder for comedians.

The appointment process in Canada is certainly not perfect. I applaud Senator Stratton for the hard work that he has clearly put into this bill. It can be argued that, prior to 1949, the process was subject to patronage and payoffs in the form of Supreme Court appointments. Before 1949, however, the Supreme Court was not our Supreme Court. We could go straight to the Privy Council in London then, sometimes without even referring cases to our Supreme Court. This was unacceptable to most Canadians, and, in 1949, that line of appeal was quite properly severed and our Supreme Court became our Supreme Court. Since that time, the appointment process has been much more careful, fair and effective, and more widely accepted.



Honourable senators, there seems to be pretty well universal satisfaction with the appointments — not necessarily with the process — with the quality of the persons who have been appointed in those intervening years under the existing system. Since the Constitution Act 1982, the Supreme Court has assumed a new role in our national life, in addition to the one that it enjoyed before 1982. Not only does it now interpret legislation, it must also measure it against the most vigorous charter of rights in the world. We cannot complain about its role in that respect. Canadians wanted a written constitution and a charter of their own. Having those things requires their interpretation and their measurement of application, which must be done and can only be done by the Supreme Court.

Our present system of appointments was not made up last Thursday afternoon in a vacuum. It is derived from the centuries old English tradition and model that is enshrined in our Constitution, in section 96. It has evolved over those centuries and lasted through those centuries because it is good. It works. It provides for the independence of judges from the vagaries of electoral politics.

The idea of judges being subjected to the kind of public spectacle that attended the nominations to the United States Supreme Court of Robert Bork and Clarence Thomas is anathema to me and, I believe, to most Canadians. The grafting onto our system of that American-style process, with all of its televised circuses, is, in fact, grafting the ears of a donkey and the tusks of an elephant onto a beaver. The result is unwieldy in the extreme. They just do not fit.

I believe it is widely accepted that Supreme Court appointments in our country are not subject to the biases and prejudices of party politics. I believe it can be argued that there is greater flexibility in the present appointment system than would obtain in a formalized committee process as proposed in the bill. I note parenthetically that, as Senator Stratton pointed out the other day, clause 11 of this bill provides a loophole — an exception that permits the government to bypass the whole procedure if they think it would take too long to satisfy the public interest. That seems to me to be a shortcoming. If I were in favour of Bill S-20 I would want that clause removed because it is a loophole through which any successive government could drive a Mac truck.

The government is responsible to Parliament, and through Parliament it is responsible to the people for its appointments, as it is for all its other actions. This is a centuries old system, a concept that has stood us in good stead, which we have used to good effect. It gives our Supreme Court judges a genuine and reputable independence.

The fact that other systems appear to be working well in other countries, with other constitutions and other charters of rights and in circumstances that are "other" in every respect, is not a good argument that it should be imported into Canada. I am disturbed, honourable senators, by the prospect and the thought of the public compiling of dossiers on all the candidates upon their solicitation, which would turn, as we all know, into an application process. I am also disturbed by the public sideshows in which the various candidates would be involved and from

which they would emerge as either winners or losers. It is in the game show where we vote people off the island and the last person standing wins.

I would not want any Canadian to appear before an appeal court in St. John's or Victoria and know that they were appearing before a failed applicant to the Supreme Court. I admit that I would provide a degree of transparency, but at what cost? I envision in the proposed procedure that we would have people who interpret our laws as being from those who lobby the best, those who campaign the best, or those who make the best deal. That is not a description of the people who I would want to be applying our laws and defending our Charter. It would end up putting politicians into the Supreme Court, and we have quite enough politicians already.

Honourable senators, I have carefully constrained my remarks to the question of Supreme Court appointments as contemplated in this bill. However, I note that the schedule of the bill proposes the nomination and review by committee of appointments to the offices of Governor General, lieutenant governors of the provinces, commissioners of the territories, the selection of the Chief Justice of the Supreme Court and senators. I will leave it to others to comment, if they will, on the question of the holders of those various offices being chosen by means of the process set out in this bill. For myself, I must vote against the bill solely on the matter of its reference to appointments to the Supreme Court.

**Hon. Terry Stratton:** Would the honourable senator take the question?

**Senator Banks:** Yes.

**Senator Stratton:** While I respect the honourable senator's opinion regarding the Supreme Court, the misconception is that this bill would repeat or create a Senate committee such as exists in the United States that would have veto power over appointments. That is not the intent of the bill. The intent of this bill, as I stated in my speech, is that apart from having a resume on an individual, we want to be able to put a human face and personality to that resume.

• (1500)

I can appreciate and understand the position taken on judges but I firmly believe that there should be a point at which they are not ghost-like to the Canadian people, as they are now. Judges are real human beings, and we want to see some of their personality.

The honourable senator objects to the review process of appointments to the Supreme Court, but he did not give an opinion on the appointment of the Governor General, lieutenant governors, senators and so on.

The intent of this bill is to start a process similar to that at Meech Lake. In that process, the provinces had the opportunity to develop lists of nominees to be selected by the Prime Minister for appointment to the Senate. That was the start of a process to bring sunshine and light on the appointment process. Is the honourable senator fundamentally opposed to that principle?

**Senator Banks:** No, I am not against the principle of bringing sunshine and light to the process.

I recognize that my honourable friend is not proposing that a Senate committee would have a veto over appointments to the Supreme Court or anywhere else. It is the process of review that will take on that character. It will be newsworthy, which will place what I regard as an improper glare and scrutiny on that process. I do not think that is the right way to proceed.

I think the senator's idea of having the screening process approved by committee is a good one. I also agree that making the persons who are appointed to the Supreme Court better known to Canadians is a good idea. That would be a public relations, marketing process. I think we should know the judges of the Supreme Court, as well as other courts and the Governor General, better than we do.

However, the theatricality that would attach to the process causes me the greatest misgivings. I am not opposed to shining light, as the senator says, on appointees to those positions. I am opposed to shining light on the candidates for appointment to those positions, as it would give the aura of a contest. That process bothers me.

Incidentally, I advisedly did not comment on appointments outside of those to the Supreme Court.

**Senator Stratton:** If I may, the purpose of this bill is not to create a circus. That is not the intent. The real purpose of this bill is that a committee of the Privy Council develop the criteria for selection. Those criteria would be put into place. That same committee would then receive applications and aid applicants to a position. The process, therefore, would not become a circus.

Honourable senators, lawyers apply for positions as judges through a lay committee in each province. That is what takes place now. If that vetting process is successful for lawyers wanting to be judges, why could it not be used for the Supreme Court? If the vetting process brought in by Brian Mulroney's government is an acceptable process, public yet not public, why could not the same thing happen with appointments at the senior levels?

**Senator Banks:** Honourable senators, I will revert to my show business analogy. If we were to ask a member of the United States Senate or the framers of the process by which Supreme Court justices are approved by the U.S. Senate, they would also argue that the process is not designed to be a circus or to be theatrical. That is certainly not its intent, but it has become a circus.

A review process, however nicely we put it, undertaken by a committee of the Senate as suggested in this bill would, in my view, take on a theatrical characteristic. I agree that the process may not be one that my honourable friend intended in the bill, but I am concerned that, notwithstanding those good intentions, it

would take on those characteristics. I know that if I were still a member of the media, it would take on those characteristics.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, would Senator Banks agree that if a screening process had been in place at the time, it would have allowed senators to quiz the former President of the Business Development Bank on certain criteria that he used to make loans? That might have avoided some of the problems that his party is currently facing.

**The Hon. the Speaker pro tempore:** Senator Banks, I am sorry to interrupt, but before you answer, you must ask leave. Your time has expired. Are you requesting leave?

**Senator Banks:** Honourable senators, I would request leave to continue.

**The Hon. the Speaker pro tempore:** Is leave granted, honourable senators?

**Hon. Pat Carney:** No.

On motion of Senator Cohen, debate adjourned.

[Translation]

## THE AUDITOR GENERAL

MR. DENIS DESAUTELS—MOTION TO SEND MESSAGE  
TO HOUSE OF COMMONS ADOPTED

**Hon. Jean-Robert Gauthier,** pursuant to notice of March 27, 2001, moved:

That, in the opinion of the Senate, Mr. Denis Desautels has been an excellent Auditor General of Canada.

Scrupulously honest, professional, fair-minded and a determined investigator, Mr. Desautels carried out his duties as Auditor General efficiently and effectively. During his ten-year term, he not only verified the government's accounts but also was able, thanks to his leadership, to lead a team as professional and dedicated as himself.

The Parliament of Canada thanks Mr. Desautels for his services and recognizes the valuable work he has done for his country.

He said: Honourable senators, I gave notice of that motion yesterday. This motion is a normal follow-up to a motion agreed to by the Senate on March 22.

I would simply like this message to be sent to the House of Commons, so that it will join us in recognizing the great services rendered to the country by Mr. Denis Desautels, the Auditor General of Canada, who will retire on March 31.



[English]

• (1510)

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):**

On behalf of honourable senators sitting on this side of the house, we are happy and pleased to lend enthusiastic support to this resolution. We recognize that the Auditor General, who is shortly to retire, has served Parliament in a manner that speaks loudly and clearly to the importance of the office and the excellent level and quality of achievement that the current incumbent was able to achieve during his tenure. Also, it affords us the opportunity to underscore the importance that officers of Parliament, such as the Auditor General, play in assisting members of this house and of the other place in holding government to account. I simply wish

to place on the record that honourable senators on this side of the Senate enthusiastically embrace this resolution.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, we on this side wish to support the motion proposed last week asking that a message be sent to the House of Commons to recognize the work of the Auditor General, Mr. Denis Desautels, who will soon retire.

Motion agreed to.

The Senate adjourned until Thursday, March 29, 2001, at 1:30 p.m.

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CANADA

# Debates of the Senate

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NUMBER 22

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OFFICIAL REPORT  
(HANSARD)

Thursday, March 29, 2001

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THE HONOURABLE DAN HAYS  
SPEAKER





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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Thursday, March 29, 2001

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### DISTINGUISHED VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, today in the gallery there is a Mohawk delegation from Kanesatake.

*[English]*

We have with us Grand Chief James Gabriel, Chief Clarence Simon, Chief Marie Chéné, Senior Negotiator Brenda Etienne, as well as Ms Darlene Francis.

Welcome to the Senate.

### SENATORS' STATEMENTS

#### LAWSUIT AGAINST CANADIAN ALLIANCE PARTY

**Hon. Edward M. Lawson:** Honourable senators, as I was saying when I was interrupted yesterday, there is something wrong with the picture when the perpetrators of character assassination against individual senators, which is an attack on the entire chamber, can go to the Board of Internal Economy of the House of Commons and have their legal fees paid, while the victims of these character assassinations are left to take care of themselves. In my own case, at the time of the settlement, I had about \$25,000 worth of legal fees. I was able, in the settlement, to recover that amount and, in addition, to receive what was described as an amount sufficient to discourage any future character assassinations. From that amount, I was also able to make a donation to the Vancouver Police Foundation.

The real concern I have, and which I was raising yesterday, is that a list of 10 senators who were under attack ran on a Web site for six weeks. Senators may recall that Preston Manning went to the House of Commons and added another 10. Of course, the headlines read: "Manning to senators: Resign, resign. Tells patronage sheep to quit before the public kicks them out."

Of the twenty people they targeted, two were criticized validly. Two were convicted of wrongdoing. As an aside, I think we should make it a policy and precedent that if a senator is convicted of wrongdoing, that senator should be suspended with all privileges until the appeal is heard, except the right to participate in the chamber. That would take care of that.

However, what were the other 18 senators guilty of? Well, they were guilty of being appointed to this chamber. They got here by doing outstanding deeds and services in their communities, cities and provinces across the country, such that they came to the recognition of the Prime Minister of the day who appointed them to the honour of serving in the Senate. The real crime that Manning and the Reform Party were accusing them of — some of them, some of you — was being members of the same political party as the Prime Minister who made the appointments. That is what they were suggesting.

Honourable senators, I suggest that we should have gone over the list of these 18 people, picked the three, four, five or six best cases, and filed a mammoth series of lawsuits to put an end to this nonsense. We should consider that.

I am pleased to say that after discussion yesterday, Senator Kroft, Chair of our Standing Committee on Internal Economy, Budgets and Administration, said that if I made a presentation today, he would be willing to revisit this issue. I think we should do that.

The other criticism that we have all heard, honourable senators, is that we do not have the legitimacy to be here because we are not elected. Well, the Constitution that allows for members of Parliament to be elected to the House of Commons is the same Constitution that provides exclusively for the Prime Minister of the day to appoint us to be here. We have equal legitimacy with the House of Commons. When anyone else makes that criticism and says that we do not have legitimacy, I suggest that we tell them gently and with love in our hearts that they do not know what the hell they are talking about. We have equal status with the House of Commons.

**The Hon. the Speaker:** Once again, honourable senators, as reluctant as I am to interrupt the second-most senior senator in this place, I draw his attention —

**Senator Lawson:** Give me one more minute to finish.

**The Hon. the Speaker:** I am sorry, Senator Lawson. We have a strict rule. Other senators wish to speak.

#### THE LATE MOE KOFFMAN, O.C.

##### TRIBUTE

**Hon. Tommy Banks:** Honourable senators, I stand today to mark with profound sadness the death of an internationally renowned Canadian artist who is remarkably of both great distinction and great popularity.



Moe Koffman soared to worldwide renown, success and notoriety in 1958 with his recording of *The Swinging Shepherd Blues*, a piece of music which is familiar throughout the world, transcending all musical tastes and borders. That notable success, which was both a continuation and a precursor of even greater success, was merely the tip of an enormous artistic oeuvre.

His body of work and his prodigious and unassailable worldwide reputation as a pre-eminent composer and instrumentalist have resulted in every possible honour being heaped upon him, fortunately during his lifetime. There is literally no honour of which our nation is capable or of which the music industry is capable that Moe Koffman did not receive.

Honourable senators, the loss of this truly remarkable talent and gentleman is and will be deeply felt throughout the world and particularly by Canadians. He was a truly great Canadian. Happily, his wonderful music and his fond memory will long survive him.

Our most sincere condolences go to his family and to his many close colleagues.

[Translation]

• (1350)

## ROUTINE PROCEEDINGS

### TRANSPORT

REPORT OF THE AIR TRAVEL  
COMPLAINTS COMMISSIONER TABLED

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, pursuant to rule 28(3), I have the honour to table in both official languages the report of the Air Travel Complaints Commissioner.

[English]

### FEDERAL LAW-CIVIL LAW HARMONIZATION BILL

REPORT OF COMMITTEE

**Hon. Lorna Milne,** Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, March 29, 2001

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

#### SECOND REPORT

Your Committee, to which was referred Bill S-4, A First Act to harmonize federal law with the civil law of the

Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law, has, in obedience to the Order of Reference of February 7, 2001, examined the said Bill and now reports the same without amendment, but with the following observation:

That, pursuant to the letter of March 20, 2001, sent by the Honourable Anne McLellan, Minister of Justice, to the Honourable Lorna Milne, Chair, the Committee supports the proposal that a fifth paragraph be added to the Summary of Bill S-4, as follows:

Generally, in provisions that describe a legal concept by using a common law term and a civil law term, the common law term appears first in the English version and the civil law term appears first in the French version. Examples of this are "real property and immovables" in the English version and "immeuble et biens réels" in the French version.

Respectfully submitted,

LORNA MILNE  
Chair

**The Hon. the Speaker:** When shall this bill be read the third time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

[Translation]

### SCRUTINY OF REGULATIONS

BUDGET PURSUANT TO PROCEDURAL GUIDELINES  
FOR FINANCIAL OPERATION—  
REPORT OF JOINT COMMITTEE PRESENTED

**Hon. Céline Hervieux-Payette,** Joint Chair of the Standing Joint Committee for the Scrutiny of Regulations, presented the following report:

Thursday, March 29, 2001

The Standing Joint Committee for the Scrutiny of Regulations has the honour to present its

FIRST REPORT — "A"  
(presented only to the Senate)

Your Committee, which is authorized by section 19 of the *Statutory Instruments Act*, R.S.C. 1985, c. S-22, to review and scrutinize statutory instruments, now requests approval of funds for 2000-2001.

[ Senator Banks ]

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

CÉLINE HERVIEUX-PAYETTE, P.C.  
*Joint Chair*

(For text of appendix, see today's Journals of the Senate, Appendix "A", p. 274.)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

**Senator Hervieux-Payette:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(g), I move that this report be considered later this afternoon.

[English]

**The Hon. the Speaker:** Is leave granted?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** No.

**Senator Hervieux-Payette:** Later today.

**The Hon. the Speaker:** I asked if leave was granted and the response from one senator was "no." Accordingly, leave is not granted. Does the honourable senator wish to ask for leave in order that the item be considered later this day?

**Senator Hervieux-Payette:** Honourable senators, perhaps I could give an explanation. These are the expenses incurred for our clerks and our staff between sessions when we were not sitting and they terminate on March 31. Of course, I do not mind doing it next week, but we can only pay our bills after it has been adopted. I thought it would be appropriate, since the committee sat for the second time just today, to have it adopted before the end of the fiscal year.

**The Hon. the Speaker:** Honourable senators, I ask again, just to be sure. Is leave granted?

**Senator Kinsella:** No.

**The Hon. the Speaker:** No, leave is not granted.

Honourable senators, is it agreed that the report be put on the Orders of the Day for consideration at the next sitting of the Senate?

**Hon. Senators:** Agreed.

Motion agreed to and report placed on the Orders of the Day for consideration at the next sitting of the Senate.

## ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

REQUEST FOR AUTHORITY TO TRAVEL AND BUDGET  
PURSUANT TO PROCEDURAL GUIDELINES FOR FINANCIAL  
OPERATION—REPORT OF COMMITTEE PRESENTED

**Hon. Nicholas W. Taylor,** Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, presented the following report:

Thursday, March 29, 2001

The Standing Senate Committee on Energy, the Environment and Natural Resources has the honour to present its

### SECOND REPORT

Your Committee, which was authorized by the Senate on March 1, 2001, to examine such issues as may arise from time to time relating to energy, the environment and natural resources, respectfully requests, notwithstanding the Procedural Guidelines for the Financial Operations of Senate Committees, that it be empowered, for the purpose of such study and for its examination and consideration of such bills, subject-matters of bills and estimates as are referred to it, to adjourn from place to place within Canada and to engage the services of such counsel and technical, clerical and other personnel as may be necessary.

Your Committee will report its expenditures on a pro-rated basis between its legislative study and special study activities.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

NICHOLAS W. TAYLOR  
*Chair*

(For text of appendix, see of today's Journals of the Senate, Appendix "B", p. 280.)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Taylor, report placed on Orders of the Day for consideration at the next sitting of the Senate.



## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

### THIRD REPORT OF COMMITTEE PRESENTED

**Hon. Richard H. Kroft**, Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Thursday, March 29, 2001

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

### THIRD REPORT

Your Committee wishes to inform the Senate that it has agreed that the 64 Points Travel System be changed from calendar year to fiscal year effective April 1, 2001, and that all Senators be allocated a new set of 64 points on April 1, 2001 regardless of how many points they may have used between January 1 and March 31, 2001.

Respectfully submitted,

RICHARD H. KROFT  
*Chair*

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Kroft, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[Translation]

## COMMITTEE OF SELECTION

### FOURTH REPORT OF COMMITTEE PRESENTED

**Hon. Léonce Mercier**, Chairman of the Committee of Selection, presented the following report:

Thursday, March 29, 2001

The Committee of Selection has the honour to present its

### FOURTH REPORT

Pursuant to rule 85(1)(b) of the *Rules of the Senate*, your Committee submits herewith the list of Senators nominated by it to serve on the following committees:

### SENATE COMMITTEE ON DEFENCE AND SECURITY

The Honourable Senators Atkins, Cordy, Forrestall, Hubley, Kenny, Meighen, Pépin, Rompkey and Wiebe.

## SENATE COMMITTEE ON HUMAN RIGHTS

The Honourable Senators Andreychuk, Beaudoin, Ferretti Barth, Finestone, Kinsella, Oliver, Poy, Watt and Wilson.

Furthermore, your Committee recommends that the Honourable Senator Pitfield serve on the Senate Committee on Privileges, Standing Rules and Orders.

Finally, your Committee recommends a change of membership to the following committee:

### SENATE COMMITTEE ON ABORIGINAL PEOPLES

The Honourable Senator St. Germain replaces the Honourable Senator Wilson as a member of the Senate Committee on Aboriginal Peoples.

Respectfully submitted,

LÉONCE MERCIER  
*Chairman*

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Mercier, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[English]

● (1400)

## CONFERENCE OF MENNONITES IN CANADA

### PRIVATE BILL TO AMEND ACT OF INCORPORATION— FIRST READING

**Hon. Richard H. Kroft** presented Bill S-25, to amend the Act of incorporation of the Conference of Mennonites in Canada.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Kroft, bill placed on the Orders of the Day for second reading Tuesday next.

## LEGAL AND CONSTITUTIONAL AFFAIRS

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY CHIEF ELECTORAL OFFICER'S REPORT ON THE THIRTY-SEVENTH GENERAL ELECTION

**Hon. Lorna Milne:** Honourable senators, I give notice that on Tuesday, next, April 3, 2001, I will move:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine the Chief Electoral Officer's Report for 2000 on the 37th general election; and

That the Committee submit its report no later than June 30, 2001.

## SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY STATE OF FEDERAL GOVERNMENT POLICY ON PRESERVATION AND PROMOTION OF CANADIAN DISTINCTIVENESS

**Hon. Michael Kirby:** Honourable senators, I give notice that on Tuesday next, April 3, 2001, I will move:

That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine and report upon the state of federal government policy relating to the preservation and promotion of a sense of community and national belonging in Canada. In particular, the Committee shall be authorized to examine:

a) the effectiveness of the policies, programs, symbols and institutions that have been used in the past to promote and protect Canadian distinctiveness or which have fostered an element of Canadian distinctiveness merely by their existence;

b) the effects of globalization and rapid technological change on Canada's ability to preserve and promote its distinctiveness at home and abroad;

c) the options that exist to modernize federal policies with respect to preserving, creating and promoting the uniqueness of Canada in a changing national and international context;

d) the opportunities that exist to use new technologies to market our unique qualities to the world and to engender pride in Canadians about themselves and their country; and

That the Committee submit its final report no later than December 20, 2002; and

That the Committee be permitted, notwithstanding usual practices, to deposit any report with the Clerk of the Senate, if the Senate is not then sitting; and that the report be deemed to have been tabled in the Chamber.

## RELEASE OF CENSUS REPORTS

### PRESENTATION OF PETITION

**Hon. Lorna Milne:** Honourable senators, I have the honour to present 1,853 signatures from Canadians in Alberta, British

Columbia, Saskatchewan, Ontario and Quebec, as well as 550 non-Canadians from all across the United States who are researching their Canadian ancestry, totalling 2,403 persons who are petitioning for the following:

Your petitioners call upon Parliament to take whatever steps necessary to retroactively amend Confidentiality-Privacy clauses of Statistics Acts since 1906, to allow release to the Public after a reasonable period of time, of Post1901 Census reports starting with the 1906 Census.

These signatures are in addition to the 363 that I presented on February 20 of this year and the 1,087 I presented to March 14. I have now presented petitions with 3,853 signatures to the Thirty-seventh Parliament and petitions with over 6,000 signatures to the Thirty-sixth Parliament, all calling for immediate action on this very important matter of Canadian history.

## QUESTION PERIOD

### PRIME MINISTER'S OFFICE

#### DUTIES OF MR. DAVID MILLER AS SENIOR ADVISER— POSSIBLE CONFLICT OF INTEREST

**Hon. J. Michael Forrestall:** Honourable senators, I have a question for the Leader of the Government in the Senate. Can the minister tell us what the former Eurocopter lobbyist, Mr. David Miller, is doing in the Prime Minister's Office as his senior adviser? Among his duties is there a duty to advise the Prime Minister on the Maritime Helicopter Project?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not know the duties of the individual so named by the senator. I assume it is to give advice to the Prime Minister, and I am sure that advice will be excellent.

**Senator Forrestall:** Honourable senators, can the minister obtain for us conflict of interest guidelines if, indeed, any exist for persons moving from business to government? The minister will be aware of the potential for conflict of interest.

**Senator Carstairs:** Honourable senators, if such conflict of interest guidelines exist for someone who has moved from a private sector job to a public sector job with the Government of Canada, I will obtain such for the honourable senator.

**Senator Forrestall:** Can the minister indicate to us whether Mr. Miller will absent himself from discussions on the Maritime Helicopter Project?



**Senator Carstairs:** Honourable senators, if such information is available — that is, if Mr. Miller is prepared to make such a statement — I will make such a statement available to the honourable senator.

## NATIONAL DEFENCE

### REPLACEMENT OF SEA KING HELICOPTERS—RISK ANALYSIS PRIOR TO SPLITTING PROCUREMENT PROCESS

**Hon. J. Michael Forrestall:** Honourable senators, questions and answers to industry questions are posted on the Department of National Defence Maritime Helicopter Project Web site. Questions 2000-29 and 2000-87 state that no risk analysis was carried out on splitting the procurement for the Maritime Helicopter Project. Additionally, no discussion papers, analysis or standard operating procedures were completed prior to the splitting of this particular project. Could the Leader of the Government tell us if it was because the government split the program without warning the departments involved to exclude the EH-101 from the competition and direct the contract through one means or another to Eurocopter?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the question that has been asked by the honourable senator based on information obtained from answers found on the Web site does not indicate what the motive might have been. If I should learn of any motive, I will make it available to the senator.

**Senator Forrestall:** I should like the answers not only to these questions today, but the answers particularly to the questions that I asked yesterday. These responses are necessary if we are to get to the bottom of a matter about which I am becoming quite disturbed.

**Senator Carstairs:** Honourable senators, I thank the honourable senator for his questions, both yesterday and today. I will make every effort to get that information to him as quickly as I possibly can.

## HEALTH

### USE OF HIGH RISK ANIMAL TISSUES IN FOOD CHAIN

**Hon. Mira Spivak:** Honourable senators, last week, the European Union proposed that 10 countries be exempt from a new meat import ban. Canada is not on the list. The new ban will start in May 2001. Its purpose is to prevent the human variety of mad cow disease.

Canadian meat and meat products were refused because we cannot assure Europeans that we are taking enough precautions against mad cow disease, in their view.

A major food safety concern is something called "specified risk materials." These tissues are known to carry the bulk of the

infective material before a cow shows any symptoms of mad cow disease.

EU countries banned the use of brains, eyes and spinal cords in 1997. The list was expanded in December 2000. Canada has not banned these tissues. Canadian rendering plants can use them even when they come from fallen stock or animals that died before slaughter.

Would the Leader of the Government use her good offices to check whether this is indeed accurate information and to ask the government to reconsider taking those high-risk tissues out of the human and animal food chain?

Although this is a European concern, it is also our concern. There are many other questions on this particular issue, but this is what I would respectfully request.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for her question. I will take her question to the government.

Mad Cow Disease, as the senator knows and I hope every Canadian knows, is an extraordinarily serious disease. It is unlike foot and mouth disease in that it can go from animals to human beings.

Clearly, we must ensure that Canada is protected in every way, shape and form. We must also ensure that our food products can move into other countries freely.

I take the honourable senator's question extremely seriously. As she has asked, I will use my good office, whatever good I might have, to check whether the information she has supplied today is 100 per cent accurate. If it is accurate, the government will reconsider banning such products.

**Senator Spivak:** Honourable senators, the question of the supervision of rendering plants is one that, hopefully, we can pursue here in another forum because it is a very important question. I am not sure that all of the required protection, supervision and enforcement measures are in place.

**Senator Carstairs:** To add to my previous answer, honourable senators, this is a perfect example of a situation where a standing committee of the Senate could, as it has done in the past, do very good work. I would suggest, as I believe that the senator is still a member of the Agriculture Committee, that she bring this matter to that standing committee.

I think that Canadians as a whole are very concerned not just with mad cow disease but also with foot and mouth disease.

**Senator Spivak:** Honourable senators, this is opportune because last evening before the Finance Committee, the Auditor General suggested that the whole question of food safety could come before a Senate committee. I sincerely hope that his suggestion meets with the approval of all honourable senators here.

I do not know to which committee such a study might be referred — the Finance Committee or the Agriculture Committee.

[Translation]

**Senator Carstairs:** As honourable senators know, those questions are determined by a committee that then reports to the Senate. I can assure honourable senators of my support.

## INTERNATIONAL TRADE

### UNITED STATES—RENEWAL OF SOFTWOOD LUMBER AGREEMENT—MARITIME LUMBER ACCORD

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, as this is the last day that we will be meeting prior to the end of the United States-Canada agreement on softwood lumber, I should like to ask the minister what advice I could give to New Brunswick exporters of softwood lumber as they head for the border crossing at Holton, Maine, on April 1, 2001.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, my advice, and I think the government's advice, would be to continue to act in the responsible fashion that they have acted in the past and to take their exports of lumber across the border, where they are welcomed by the vast majority of Americans — not necessarily by some of the senators in the Senate of the United States, but by the vast majority of Americans.

**Senator Kinsella:** Honourable senators, I appreciate the manner in which the minister has answered my question because she underscores the political dimension of this issue. Given that she is noting that there is a major political consideration, no doubt involving how the politics in the United States will play out in Congress, would it be helpful if the premiers of the Maritime provinces were to meet with the governors of certain states? Does the minister think that it would be worthwhile for the premiers to meet with the Governor of the Commonwealth of Massachusetts, in particular, who is rumoured to be under consideration as the envoy of the United States to Canada? If the minister thinks that this is a good idea, our good offices on this side would be happy to facilitate such a meeting with the Premiers of New Brunswick, Nova Scotia and Prince Edward Island.

**Senator Carstairs:** Honourable senators, I thank the honourable senator for his question. I think it is always useful when politicians on both sides of the border get together. The Maritime premiers have had a very solid relationship with New England state governors in the past. I think that any expression of information that flows between the governors and the Atlantic premiers would be extremely useful.

## JUSTICE

### FEDERAL COURT DECISION— MAINTENANCE OF ESTABLISHED LINGUISTIC RIGHTS

**Hon. Jean-Robert Gauthier:** Honourable senators, my question is for the Leader of the Government in the Senate. The federal court brought down a decision a week ago on the interpretation of the Contraventions Act which was passed by Parliament in 1996.

My concerns relate to the fact that the federal government omitted to confirm in the Contraventions Act the maintenance of linguistic rights established under federal statutes.

In short, the federal government negotiated with the provinces and certain Ontario municipalities on the administration of courts and administration on federal lands.

For instance, Pearson airport is located in the Ontario municipality of Mississauga. This municipality was able to issue tickets in English only, and this represented a breach of federal statutes and regulations in accordance with the Official Languages Act and the Criminal Code.

Some time ago, the Association des juristes d'expression française and the Commissioner of Official Languages had asked the courts to clarify the linguistic rights that must take precedence in these federal, provincial and municipal agreements.

• (1420)

Will the minister inquire of her colleague the Minister of Justice whether amendments will be made to the Contraventions Act, as recommended by Justice Pierre Blais on March 23, 2001, in order to ensure respect for the quasi-constitutional linguistic rights provided for in the Official Languages Act and the Criminal Code and in order to ensure that they are clearly mentioned in these agreements?

[English]

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for his question. I also thank him for providing me a copy of the question, which, unfortunately, I did not receive until 1:12 p.m. Although I made efforts to find the answer, I could not obtain it in such a short time. However, we have made the inquiry on his behalf, and we are hopeful that we can provide the answer to him as quickly as possible.

[Translation]

**Senator Gauthier:** Honourable senators, I have a supplementary for the minister. In his ruling, Judge Blais wrote:

...that the federal government should ensure that every Canadian citizen has his or her linguistic rights guaranteed by any measure to ensure the implementation of the Contraventions Act.



In addition, Judge Blais gave the federal government one year in which to meet its obligations, failing which the Contraventions Act would become void. Will the minister assure us that the necessary amendments will be made to the Contraventions Act so that linguistic rights are clearly set out in this legislation?

[English]

**Senator Carstairs:** Honourable senators, I cannot respond to the specific statement by Justice Blais. However, I can tell the honourable senator that when judges have made similar orders in the past, the government has complied. My instinct is that they would comply with this one, as well.

## INTERNATIONAL TRADE

### UNITED STATES—RENEWAL OF SOFTWOOD LUMBER AGREEMENT—MARITIME LUMBER ACCORD

**Hon. Gerald J. Comeau:** Honourable senators, my question is a follow-up to the questions by Senator Kinsella in respect of the softwood lumber issue. As the minister knows, there are two actions that may be taken by the Americans: one would be countervail and the other would be dumping. As I understand it, the Americans do not view the Maritime lumber industry as being in the same vein as the Western lumber industry. However, the Maritime industry will be caught in the middle of a problem that is not of its making. Has the minister any indication of a contingency plan in the event that this does happen to our small lumber industry in Atlantic Canada? We do not want to lose any more jobs in the industry, so it is extremely important to Atlantic Canadians.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the honourable senator has raised both the issues of countervailing and dumping practices. I can assure the honourable senator that in both cases the government will do everything it can with the means at its disposal, to prevent the countervailing duties and to challenge the U.S. negotiators in every possible way.

Clearly, we hope that the Americans would not try to impose countervailing duties or to use an anti-dumping policy against any Canadian import. This is particularly so for the Atlantic area because it does not fall under the same obligations and responsibilities as other parts of the country. We are working toward a deadline. We are doing everything we can to prevent unfair practices by the United States. We are all looking for a positive resolution.

**Hon. Brenda M. Robertson:** Honourable senators, on the same issue, did I understand the Leader of the Government in the Senate to say yesterday that the government was negotiating the whole issue? Have they not considered that the Maritime agreement has been satisfactory for the U.S. and for the Maritimes? Has the government made an attempt to satisfy that agreement or are they grouping it with the broader issue? If it were the latter, the broader Canadian issue, would the government consider renegotiating the Maritime position on an

individual basis, rather than becoming involved in the negotiations for the general softwood lumber industry?

**Senator Carstairs:** Honourable senators, it is fair to say that the Government of Canada believes that it is important that the United States understand that Canadian softwood lumber export to the United States have to be dealt with fairly from coast to coast. It is also important that the Canadian government recognize that the Atlantic provinces have had a special relationship, which guarantees free trade in softwood lumber between Canada and the United States. That is the goal that they hope to achieve for the entire country.

**Senator Robertson:** Honourable senators, I understand from the answer of the minister that the government will not negotiate the Maritime case separately from the national case. Therefore, we will be caught in arguments faced by the rest of Canada. I cannot understand why the Maritimes are not being dealt with separately, because our position is different from the rest of the country.

**Senator Carstairs:** Honourable senators, as the honourable senator knows, we have a Free Trade Agreement with the United States and NAFTA, which involves Canada, the United States and Mexico. One obligation of the participants is the equality of treatment among the three countries, no matter where in the country that trade is taking place. It is the goal of the Government of Canada to ensure that the obligations agreed to by the three countries — Canada, the United States and Mexico — be protected in every single region of this country.

[Translation]

## DELAYED ANSWER TO ORAL QUESTION

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have a delayed answer to a question asked by Senator Gauthier on March 12, 2001, regarding Treasury Board, possible reform of the public service, and involvement of the Senate.

## TREASURY BOARD

### POSSIBLE REFORM OF THE PUBLIC SERVICE— INVOLVEMENT OF SENATE

(Answer to question raised on March 12, 2001, by Honourable Jean-Robert Gauthier)

A comprehensive reform of the human resource management regime is required and this may include legislative reform as well as an examination of organizational roles.

The President of the Treasury Board, as the champion of human resource management reform, will be considering how best to proceed with the reform agenda. Decisions on who will be involved in the process will be forthcoming.

The Auditor General has commented on the need for an integrated framework that clarifies the fragmented accountability for human resource management.

Currently, the Public Service Commission verifies accountability for performance for authorities delegated under the Public Service Employment Act. Departments provide annual reports on results. In addition, surveys and audits of staffing along with staffing appeals and investigations provide information relevant to accountability.

## ROYAL ASSENT

### NOTICE

**The Hon. the Speaker** informed the Senate that the following communication had been received:

### RIDEAU HALL

March 29, 2001

Mr. Speaker,

I have the honour to inform you that the Honourable Ian Binnie, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy of the Governor General, will proceed to the Senate Chamber today, the 29th day of March, 2001, at 4:15 p.m., for the purpose of giving Royal Assent to certain bills.

Yours sincerely,

Anthony P. Smyth

*Deputy Secretary, Policy, Program and Protocol*

The Honourable  
The Speaker of the Senate  
Ottawa

[English]

• (1430)

## ORDERS OF THE DAY

### KANESATAKE INTERIM LAND BASE GOVERNANCE BILL

#### SECOND READING—DEBATE ADJOURNED

**Hon. Joan Fraser** moved the second reading of Bill S-24, to implement an agreement between the Mohawks of Kanesatake

and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence.

She said: Honourable senators, 11 years ago this month, the barriers went up between the village of Oka and the neighbouring Mohawk community of Kanesatake. Thus began a tragic time, a period of violence and deep mistrust between those two small communities and, very soon, between natives and non-natives across southern Quebec and even beyond.

The Oka crisis will long be remembered as one of the most difficult episodes in the history of Canada's relations with First Nations people. It was an armed confrontation whose images appeared daily in newspapers and on television, not only in Canada but around the world. The crisis bitterly divided a region where Mohawks and non-Mohawks have lived side by side for centuries and in which they continued to live after the barricades came down and the international press departed to seek another crisis somewhere else.

It was, as honourable senators can imagine, immensely difficult for residents of the two communities to rebuild any kind of trust. Too many harsh things had been said, too many foolish or malicious things done on both sides, for true peace to take hold quickly; but, now, 11 years later, significant progress has been achieved. We can truly say that the future again holds promise.

Today, we are being asked to support legislation that will move all parties forward in seeking a final resolution of the land and governance issues that have plagued the Mohawks of Kanesatake. Bill S-24, the Kanesatake Interim Land Base Governance Bill, is implementing legislation for a historic agreement that provides the first legal recognition of a land base for the Kanesatake Mohawks, as well as law-making powers over those lands. This agreement is a milestone in an ongoing process to resolve century-old grievances and to build good relations between Canada, the Mohawks of Kanesatake and the non-Mohawk residents of the Municipality of Oka.

It is important to realize that while this agreement has been negotiated between the Mohawks and the federal government, Oka has been closely consulted. The agreement contains some innovative measures to ensure that the two communities will be able to manage their respective lands in harmony.

[Translation]

Honourable senators, you may not be aware of the significant progress made over the past decade to restore stability and the authority of law in Kanesatake. The last five years have been particularly successful. For example, in December 1996, Kanesatake, Canada and Quebec reached an interim agreement to establish a police force, and they agreed on a patrol area. In October 1999, the Kanesatake police force became a full-fledged police force and its officers were promoted from special constables to full-fledged police officers.



Today, the Kanesatake police and the Quebec provincial police maintain positive relations and they have worked together on some major operations.

The establishment, in 1999, of a senior citizen centre is also a great source of pride for the Mohawks of Kanesatake. Moreover, the Mohawks now have control over their education and a new Mohawk immersion school is being built. The planning work has also begun to build a youth centre in Kanesatake, something that will have a positive impact on young people.

The acquisition of land to give the Mohawks of Kanesatake an interim land base is also progressing, and negotiations are continuing on more global land issues and on the exercise of powers in general by the Mohawks of Kanesatake.

• (1440)

[English]

In the years since the Oka crisis, Canada has purchased 177 properties for the use and benefit of the Mohawks of Kanesatake. These lands include part of the area known as The Pines that figured so importantly in the 1990 crisis. Kanesatake has since used the land acquired in The Pines to expand its cemetery.

A Mohawk development corporation was created in 1999 to take over management of properties purchased in Oka since 1990, as well as to pursue other economic development initiatives. Under the terms of a property management agreement with Canada, the corporation leases these properties to Kanesatake members. All rents collected through this arrangement are used for the benefit of the community as a whole.

Honourable senators, positive results of these efforts to establish a land base for the Mohawks of Kanesatake are now becoming evident in the community. It is time to take the next step, to provide a clear legal status for that land base and a solid legal basis for the Mohawks of Kanesatake to govern these lands in much the same way as other First Nations are able to do under the Indian Act. This is the crux of many of the problems that have arisen in this region. The lack of clarity with respect to the status and governance of Kanesatake Mohawk lands has created a legal vacuum and contributed to uncertainty and volatility in the region.

The land base has been held as Crown lands for the use and benefit of the Mohawks of Kanesatake, but not as reserve lands under the Indian Act. For this reason, the Mohawk Council of Kanesatake has not had the legal tools available to other First Nations to control the development of its land base or to prevent potentially harmful uses of the land.

The legal situation with respect to Kanesatake lands has become even more uncertain in the wake of the 1998 *Jean-Roch Simon* decision, which had the effect of subjecting at least some Kanesatake Mohawk lands to municipal bylaws. No

other First Nation in Canada can be said to fall under such a regime.

Honourable senators, Bill S-24 will resolve this legal uncertainty by implementing the Agreement with respect to Kanesatake Governance of the Interim Land Base, which was signed on December 21 last year by the Minister of Indian Affairs and Northern Development and the Grand Chief of the Mohawks of Kanesatake.

By recognizing an interim land base for the Mohawks of Kanesatake and by establishing the legal underpinning for them to govern the development and use of that interim land base, Bill S-24 will consolidate the gains that have been made in Kanesatake over the past decade. For this reason, it is absolutely essential that we support this legislative initiative. To do otherwise would deal a serious blow to the government's efforts to address the outstanding grievances of the community. This legislation will contribute to lasting peace and harmony in that region.

Honourable senators, I wish to take a few minutes to review the key elements of the land governance agreement. As I noted at the outset, the agreement formally recognizes for the first time an interim land base for the Mohawks of Kanesatake. I emphasize the word "interim" because the agreement explicitly states that additional lands may be brought under the agreement in the years ahead should both parties concur.

Under the terms of the agreement, the Kanesatake Mohawk interim land base will be brought under section 91.24 of the Constitution Act, 1867, which gives the Government of Canada exclusive legislative authority over Indians and lands reserved for Indians. However, Kanesatake Mohawk lands will not be considered reserve lands under the Indian Act. This approach ensures a clear legal status for the lands, while preventing them from falling within the cumbersome and restrictive land management regime of the Indian Act.

Honourable senators, as its name implies, the agreement will also ensure that the Mohawks of Kanesatake have a solid legal foundation for adopting land-related laws and regulations that will apply to the interim land base. In the absence of that legal foundation, they have been unable to exercise these powers.

Bill-24 will confirm that the Mohawks of Kanesatake have law-making authority in such areas as land zoning, waste management, the health and quality of life of residents and fire safety. All residents of the area, Mohawks and non-Mohawks alike, will benefit from having a government in Kanesatake that has the tools it needs to ensure the safe development of the lands.

To entrench the principles of good governance by which the Mohawk Council of Kanesatake will exercise its powers, the agreement also commits Kanesatake to adopt a land governance code. This code will provide for open and responsible governance in the best interests of the community with full political and financial accountability.

Honourable senators, another key element of the agreement relates to the harmonization of certain Kanesatake laws with Oka bylaws on adjacent properties. To fully appreciate the need for harmonization, it is important to understand that not all parts of the Kanesatake interim land base are contiguous and that 57 Kanesatake Mohawk lands are actually located within the village of Oka. It is not a matter of having one large block of Mohawk lands and one block of non-Mohawk lands. If you look at a map, you will see that, in the village, the two sets of lands, Mohawk and non-Mohawk, form an extraordinary patchwork, a crazy quilt, a kaleidoscope. These communities could not extricate themselves from each other even if they wished to do so.

Therefore, it is clearly in the best interests of all residents of the region that future development of the adjacent lands in the village of Oka be compatible and harmonious. That is why the land management agreement imposes an obligation on Kanesatake to negotiate a harmonization agreement with the Municipality of Oka for their respective properties in the village of Oka. That harmonization agreement would deal with the harmonization of Kanesatake land-use laws and Oka land-use bylaws on the adjacent properties in the village of Oka.

Representatives of the two communities are already meeting to negotiate a harmonization agreement and to address other issues of mutual concern. Until the harmonization agreement is in place, the development on Kanesatake Mohawk lands in Oka will be limited to the uses that are now permissible in Oka, and the status quo will prevail.

Honourable senators, any government that has the authority to adopt its own laws must have the corresponding authority to execute those laws. Toward this end, the land governance agreement provides powers for Kanesatake to enforce its community laws. It also provides for Kanesatake to appoint its own justices of the peace, once an agreement has been concluded on the relationship of these justices with the existing justice system in Quebec. Together with the representatives of the Government of Quebec, Canada and Kanesatake are well on their way to concluding such an agreement.

The land base agreement also addresses the application of provincial laws on Kanesatake lands. Essentially, Bill S-24 will achieve the same legal effect that currently exists on Indian Act reserves across the country. In general, of course, the application of provincial laws on Indian lands is somewhat limited because these lands fall within federal jurisdiction.

Having said that, the Mohawks of Kanesatake have demonstrated strong environmental leadership by agreeing that, in the absence of federal environmental standards, their actions will nevertheless be consistent with the standards of environmental practice that prevail in the province.

A further key point is that the land base agreement is without prejudice to any Aboriginal or treaty rights of the Mohawks of

Kanesatake; nor does it prejudice a resolution of their outstanding grievances with respect to the seigneurie of the Lake of Two Mountains. These matters continue to be the subject of negotiations between the Government of Canada and Kanesatake.

That explains what the land governance agreement is, honourable senators; but equally important is what it is not.

This is not a land unification agreement. Some of the lands set aside for the Mohawks of Kanesatake are, as I said, dispersed and interwoven with lands belonging to non-Mohawk people in the area, and this agreement does nothing to change that.

This agreement is not a land claim agreement; nor does it represent a final resolution of Kanesatake's outstanding land-related grievances. Many land-related issues remain to be resolved, but before a final settlement can be achieved all parties need to have a clear understanding of the legal status of the existing interim land base and the laws that apply to that land base.

This is not a comprehensive self-government agreement or a treaty. It is not a treaty. It is a unique governance arrangement that recognizes the special circumstances in Kanesatake. It simply levels the playing field by providing the Mohawks of Kanesatake with land management powers that other First Nations have had for decades.

Finally, I note that this agreement does not specifically address the issue of the rights of Aboriginal women. Some of you know that this is a subject about which I have serious concerns and on which I have argued that it is long past time to act. However, I am assured that in the matter of residency, which is the issue that would arise most directly in connection with any land management agreement, Kanesatake already has a thoroughly inclusive policy, not a policy of exclusion of any Kanesatake Mohawk. In addition, of course, any pertinent federal law continues to apply, as does the Charter of Rights.

Honourable senators, the land base agreement and Bill S-24, its implementing legislation, are crucial building blocks of a longer-term process to resolve the grievances of the Mohawks of Kanesatake through negotiations rather than confrontation.

[Translation]

Honourable senators, the members of the Kanesatake community have ratified the agreement on the exercise of government powers over their land. Before the vote, every Mohawk household in Kanesatake received a copy of the agreement and of the code giving authority to pass laws relating to their land, as well as a summary and an explanation of the two documents.

The council of the Mohawks of Kanesatake held two public meetings, in July of last year, and over 50 smaller workshops to explain the scope and the impact of the agreement.



[English]

On October 14 of last year, a slim majority of Kanesatake members voted in favour of the agreement. Given the closeness of the vote, 239 in favour versus 237 opposed, the grand chief and council decided that an independent recount was called for. The grand chief and council also requested an independent legal review of the ratification process itself.

On December 14, the results of the ratification vote were confirmed through a recount conducted by the Honourable Lawrence Poitras, retired Chief Justice of the Quebec Superior Court. Mr. Poitras also conducted a legal review of the ratification process and confirmed that it was fair and proper in every respect. This paved the way for the formal signing of the agreement by the Minister of Indian and Northern Affairs and the Grand Chief of the Mohawks of Kanesatake. Passage of Bill S-24 is the final step needed to implement the agreement.

[Translation]

Honourable senators, as is the case in any democracy, some members of the community oppose the ratification and implementation of the agreement. I think it should be pointed out, though, that a majority of the members have in fact ratified the agreement through a democratic, just and transparent process.

The community has therefore decided it is time to move forward. The agreement permits the Mohawks of Kanesatake to meet the challenges associated with the management of their interim land base. They will therefore be better able to meet greater challenges when they manage their permanent land base.

This is a fresh start for their region, based on a solid legal foundation, municipal harmony, constructive dialogue and the pursuit of the common goals of economic and social prosperity.

The Government of Quebec was consulted on the agreement and kept informed and gave its general approval. The municipality of Oka also gave its approval to the agreement. As I said earlier, representatives of the municipality are already working with the Mohawks of Kanesatake to harmonize certain Kanesatake laws and Oka bylaws.

[English]

Honourable senators, the negotiations that have brought us to this point have at times been challenging. What matters is that they have been successful and that they have given us the opportunity to turn another page, a very fine page, in the history of the Kanesatake-Oka region.

On motion of Senator Kinsella, for Senator Rivest, debate adjourned.

[ Senator Fraser ]

## CUSTOMS ACT

### BILL TO AMEND—SECOND READING—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Setlakwe, seconded by the Honourable Senator Gill, for the second reading of Bill S-23, to amend the Customs Act and to make related amendments to other Acts.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I took the adjournment of the debate after the second reading debate was initiated by Senator Setlakwe. I request that the adjournment now stand in the name of the Honourable Senator Angus.

Order stands.

[Translation]

## PRIVACY RIGHTS CHARTER BILL

### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Finestone, P.C., seconded by the Honourable Senator Rompkey, P.C., for the second reading of Bill S-21, to guarantee the human right to privacy.—(Honourable Senator Robichaud, P.C.).

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, Senator Beaudoin has indicated that he would like to speak to Bill S-21 at second reading stage. I have no objection to his doing so and will adjourn the debate.

**Hon. Gérald-A. Beaudoin:** Honourable senators, I should like to say a few words on the subject of Bill S-21, to guarantee the human right to privacy.

The one responsible for this bill, Senator Finestone, has described both form and content of this bill well. I shall not revisit it, therefore, except to discuss the following three points: first, the scope of Bill S-21; second, the protection of privacy under the Canadian Charter of Rights and Freedoms; and third, Canada's international obligations relating to privacy.

Bill S-21 might be described as a quasi-constitutional bill, particularly because of clause 11, which provides that no provision of any other act can derogate from any provision of Bill S-21 and confirms its supremacy, once passed, over any other ordinary act, unless expressly indicated otherwise.

As for the practical application of this bill, it is agreed that it is limited to all matters coming within the legislative authority of the Parliament of Canada, as shown in clause 9.

It appears therefore that Bill S-21 constitutes a legislative complement to the privacy rights already protected constitutionally by sections 7 and 8 of the Canadian Charter of Rights and Freedoms.

Incidentally, section 8 entrenches general protection against unreasonable search and seizure. This guarantee applies to both individuals and bodies corporate. Section 8 therefore confers protection of the right to privacy, regardless of the technique used to limit that right, but this protection is not absolute. The wording of section 8 is as follows:

Everyone has the right to be secure against unreasonable search or seizure.

The jurisprudence has clarified the concept of "unreasonable" as applied to section 8. For a search or seizure to be considered reasonable, as opposed to unreasonable, it must:

- (i) have been authorized in advance
- (ii) by a neutral and impartial individual who must act in a judicious manner
- (iii) for reasonable and probable cause, mere suspicion being insufficient; and
- (iv) carried out in a reasonable and non-abusive manner.

Therefore, an illegal search or seizure will be *prima facie* unreasonable. However, a legal search or seizure might also be deemed unreasonable if it is conducted in an abusive fashion. Moreover, it will be very hard to justify a search or a seizure deemed unreasonable as being "reasonable" under section 1 of the Charter.

Let us say from the outset that the violation of the physical integrity of a person is the most serious offence, followed by the violation of the home and of the office.

It is to be noted that, until now, the courts have made a distinction between criminal or quasi-criminal seizures and administrative seizures. The criteria set in *Hunter* apply to the former, but not to the latter. The Supreme Court also specified, in *McKinlay Transport*, that the greater the violation of privacy, the more the guarantees set in *Hunter* must be respected.

The right to privacy is also generally protected under section 7 of the Canadian Charter, which reads as follows:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Section 7 of the Canadian Charter has been given a broad and liberal interpretation by the courts. For example, according to the Supreme Court ruling in *Godbout*, one's choice of residence, in one's choice of city, is part of the concept of privacy.

It is also worth noting that by legislating — both from a constitutional and a legislative point of view — we are in

compliance with the international instruments ratified by Canada. I am thinking, among others, of section 17 of the International Covenant on Civil and Political Rights, which expressly guarantees the right to privacy.

The right to privacy is not, of course, absolute. Section 1 of the Canadian Charter of Rights and Freedoms provides that reasonable limits are permissible in our free and democratic society. Clause 4 of Bill S-21 is largely based on section 1 of the Canadian Charter of Rights and Freedoms and the related jurisprudence. However, although I have no doubt that the right to privacy is a fundamental right, I feel that there must be an appropriate balance between this right and freedom of expression and even, I would add, between the right to privacy and the right to information.

Furthermore, it is interesting to note that the monthly periodical *Le Monde diplomatique* has just devoted an entire issue of its bimonthly "Manière de voir" to the issue of privacy. This issue is entitled "Sociétés sous contrôle." The editor-in-chief, Ignacio Ramonet, concludes his editorial as follows:

And every day that passes shows us just how easily, and without our knowledge, the fragile ramparts protecting our privacy are breached in a thousand and one different ways.

That should give us pause.

Honourable senators, as I already mentioned, I support Bill S-21, subject to further consideration in committee.

[English]

• (1500)

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Would the Honourable Senator Beaudoin accept a question?

**Senator Beaudoin:** Yes.

**Senator Kinsella:** Senator Beaudoin mentioned the two sections of the Charter and the privacy provision contained in the International Covenant on Civil and Political Rights. Is the right to privacy that is contained in the covenant more extensive and more generous in its coverage than the two sections of the Charter, with the Charter sections even interpreted by the courts?

**Senator Beaudoin:** My impression is that at the international level it may be more defined because the recognition of the right to privacy in the Canadian Charter has been established by interpretation, of course. However, as the honourable senator knows well, there are 400 cases on the Canadian Charter of Rights and Freedoms. Section 7 of the Charter is, to a great extent at least, one of the most important sections. I am quite satisfied that we are giving effect to our obligations in the international world. Is the covenant more precise than our Charter, or the jurisprudence created from our Charter of Rights and Freedoms? I did not have the time to look at all the cases at the international level, but in my opinion it certainly is solidly enshrined.



**Senator Kinsella:** Honourable senators, I have a further question that may be somewhat academic, but I know Senator Beaudoin enjoys academic questions as well as socio-political questions.

Does the Honourable Senator Beaudoin think that when the Charter of Rights and Freedoms was being drafted it would have been better to have included an explicit section that speaks directly to the right of privacy?

**Senator Beaudoin:** Speaking for myself, my answer is certainly "yes." I always prefer in law a text that is more precise in important areas than a text that is a bit vague. Privacy is so important and so threatened in our new modern world that we stand to gain if we are more precise.

**Hon. Lowell Murray:** Honourable senators, on the question of a possible guarantee of the right of privacy in the Canadian Charter of Rights and Freedoms, in view of the fact that one of the powers we still have in the Senate is to initiate resolutions to amend the Constitution, would my friend consider drafting such an amendment to the Charter and bringing it in here for debate and possible approval?

**Senator Beaudoin:** Honourable senators, if my friends ask me to do that, I might find a great interest in doing so.

On motion of Senator Robichaud, debate adjourned.

## STATE OF HEALTH CARE SYSTEM

### REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the second report (interim) of the Standing Senate Committee on Social Affairs, Science and Technology, entitled *The Health of Canadians — The Federal Role, Volume One: The Story So Far*, tabled in the Senate on March 28, 2001.—(Honourable Senator Kirby).

**Hon. Michael Kirby** moved the adoption of the report.

He said: Honourable senators, I am pleased to have had the opportunity yesterday to table volume one of the second report of the Standing Senate Committee on Social Affairs, Science and Technology on the state of the health care system in Canada. This is the first of five volumes that the committee will be tabling and marks the end of a fascinating beginning.

The purpose of this report is to present evidence received in the first phase of the committee study on health care. The objectives of phase 1 were to obtain a historical overview of the federal government's role in the Canadian health care system, to understand the rationale behind the enactment of the Canada Health Act, to understand the evolution of federal funding for

health care and, in particular, to do an analysis of the myths and realities that surround our health care system.

The committee heard from a wide variety of witnesses. It was a fascinating discussion, not only because of the witnesses but also because of the contributions of my colleagues on both sides of the chamber.

I believe, honourable senators, that the Social Affairs Committee and, indeed, the Senate are uniquely qualified to bring a balanced perspective to the health care issues. Committee members, which include former health care professionals, former provincial health ministers, a former provincial premier and former public policy makers, bring a diverse range of experiences and perspectives to the table. Committee members asked tough questions and got the facts on the table. The quality of this report is a direct result of the efforts of all honourable senators on this committee.

This report provides a good reference point to move the debate forward. It provides a solid foundation for the difficult challenges the committee will face in the next four phases of the study.

With the infusion of cash from the first ministers' conference last September, things look reasonably good for our health care over the short term. Canadians are relatively healthy; indeed, we are second only to the Japan in terms of life expectancy. The United States, interestingly enough, is twenty-fifth in life expectancy, even though they spend much more per capita on health than Canadians. It would appear therefore that spending more money on the health care system is not, in and of itself, necessarily a guarantee to better and longer living Canadians.

Honourable senators, I am not, however, as confident about the long-term sustainability of the health care system. Changes in the population structure, in particular the aging of the population, the escalating costs of health care resulting from new drugs and new technologies, the continued fragmented structural approach in Canada to organizing and managing health care, as well as the changing expectations of Canadians, are a few of the realities that will challenge us to deal with the inevitable pressures that will build upon the health care system in the coming years.

If the health care system is to meet the needs of a changing population, there are fundamental issues that will need to be addressed and require a response. Any talk of reforming, restructuring or renewing the health care system arouses strong feelings of emotion and even suspicion among members of the public. The very essence of medicare says a great deal about what it means to be a Canadian, and in large part, it distinguishes us from our neighbours to the south.

The public's protection of medicare and the political support it has garnered are the main reasons for the exclusive focus of political leaders on modifying current funding levels to support the traditional system, whereas in reality major structural changes will be required if the system is to be sustainable for the long run.

If we want to have a high quality, accessible, "Canadian-style" health care system down the road, if patients want to have a high level of service and choice in their care, then we must be prepared to make some decisions that will guide us down that path. It is time, honourable senators, that Canadians talk candidly with one another about the challenges we face. It is time to get their input on key issues that will keep us on the right track. Canadians need to tell policy makers which changes they support and which ones they do not. Yet, before Canadians can have that informed dialogue, we need to raise their knowledge and awareness of the system and, indeed, what some of the options are.

Therefore, honourable senators, the future direction of this committee will lead to the publication next fall of a paper outlining the options for answering a number of the major questions.

Let us go back just for a moment in history and ask ourselves what was the original objective of medicare. When Tom Kent appeared before the Senate committee, he said that the objective of the Medical Care Act of 1966 and the Hospital Insurance and Diagnostic Services Act of 1957 was:

...to ensure that every Canadian had access to all medically necessary services regardless of their abilities to pay for those services.

• (1510)

This public policy objective was reaffirmed in the 1984 Canada Health Act, through its five famous principles of universality, comprehensiveness, accessibility, portability and public administration.

Most Canadians believe that the Canada Health Act assures uniform, publicly funded access to all health care services from coast to coast. This, in fact, is not the case. When the hospital care and medical insurance programs were started, two significant decisions were made with respect to the method by which the programs would be delivered. First, no means test would be required of patients before they received medical services. This decision was made because it was felt that a means test would discourage low-income patients from seeking medical assistance. Second, the program in each province would be administered by a central department or agency. This was made in order to have the hospital care and medical insurance program gain the efficiencies of a "single payer" model. This is the origin of the public administration principle of the Canada Health Act. Unfortunately, this public administration principle is often misunderstood to mean that the role for the private sector is prohibited in the current system. This is categorically not the case.

Honourable senators, the point is that people perceive certain things to be true about the health care system that are not true.

Other things that are true, frankly, are not even logical. Let me give you an example. If you go into the hospital and receive oxygen, it is paid for. If you go home and get the same oxygen, it is not. That is hardly the basis of a logical health care policy.

Surrounding the term "medically necessary" in the Canada Health Act, there are very significant and conflicting concepts of what that means. As you look across the country, our so-called "universal" system covers a different set of medically necessary services in different provinces. To give you an example, the services covered in Newfoundland and the services covered in Quebec are significantly different. They are different because the definition of "medically necessary" is a floor centred on traditional hospital and physician services. That floor exists across the country. Thereafter, provincial governments are allowed to add on certain services above that floor under the definition of "medically necessary." Equally, as we have seen over the years in evidence before the committee, various services that were once deemed to be "medically necessary" and insured are no longer insured. In fact, we do not have the uniform system that most Canadians believe we have.

The other thing that has happened, honourable senators, is that over the past 40 years, since publicly funded health care began, new delivery systems beyond merely hospitals and doctors have developed, for example, home care and an awful lot of drug therapy. If you get that medication in the hospital or if you go to a doctor's office and he gives you a sample, which they sometimes do, those drugs are free. However, the same drugs are not free to an individual who receives them outside those two settings. Therefore, determining what services should be considered medically necessary and covered by public funds is not as easy or simple as it sounds.

This problem will only get worse. It is interesting to note that drugs have now surpassed physician services in terms of cost. That is to say, the cost of prescription drugs in Canada exceeds the entire cost that we pay for physician services. Clearly, if the public health care system is to remain relevant to the lives of all Canadians, we need to revisit the definition of "medically necessary" and define it in terms of today's health care reality. To continue publicly funded medical coverage based only on the delivery systems of the 1960s, centred around hospitals and doctors' offices, is to ensure that the system will become less and less relevant to meeting the health care needs of Canadians.

The determination of what is to be covered inevitably leads to the question of who will pay for the services that are covered. If the definition of "medically necessary" is narrowed, it will put more of a burden on individual Canadians, who will have to foot the increasing bill for a greater share of their personal health services. If the definition of what is medically necessary is broadened, the system will cost more and the burden on public resources will increase. This, in turn, raises the question of how these expanded services should be paid for and how excessive costs can be avoided.



During its hearings, the committee heard a number of proposals for dealing with the costs in question. We will be exploring that issue in more depth as we look at the international comparative study that we will be doing later this spring. During the committee's hearings we were told, for example, that the original vision of medicare contemplated a sliding scale of after-the-fact fees by having, at the end of each year, the value of the services that an individual obtained from public health insurance form part of his or her taxable income for tax purposes. This would mean that lower-income Canadians would have paid little or nothing and higher-income Canadians would have paid a significant amount. The question of how various expanded services should be paid for will come before the committee and be explored in great detail in the months ahead.

Honourable senators, when I revert to the issue of the four patient-oriented principles of the Canada Health Act, namely, universality, portability comprehensiveness and accessibility, that leads inevitably into the issue of patient's rights and, as testimony before the committee showed, that, in turn, leads us into the issue of patient's responsibilities. Surely patient's responsibilities must also be a factor in our discussion of reforming the health care system.

That issue will also be coming up, along with the issue of the principle of public administration, which is not a principle aimed at eliminating privatization. The public administration element is based on guaranteeing the efficiencies of a single-payer system, but that fact is not widely understood.

In summary, honourable senators, we must examine whether Canada should continue to restrict our publicly funded program to simply two delivery systems, as we do now, or whether we should go back to first principles and accept the notion that it is health care we are talking about, not merely hospital and doctor care. If that is the direction we take, then the questions become: How should we pay for it? Exactly what will be covered? If payments are to be made by individuals, when should that occur?

The issues that the committee will consider in the months ahead are: how we can make the system more accountable to Canadians, what can be done to improve the public health of Canadians, and how we can address the health needs and improve the health status of the Aboriginal population.

Honourable senators, many of you would be stunned if you saw some of the data that has come before the committee on the health status of Aboriginal Canadians compared with the health status of non-Aboriginal Canadians. It is truly a deplorable state of affairs. The committee will be addressing these issues as we proceed through the next stages of our debate. It is our view that however controversial some of the questions and options that we put on the table may be, rational debate only comes from

reasoned discussion based on the facts. We hope that this report is the first step toward putting some of the facts on the table.

Developing options for future debate will be the focus of the next phase of our work. It is time to have that debate in Canada. It is time to rethink what Canadians need and want in a future health system. It is time to have this debate, not from the perspective of partisan political objectives, but from the perspective of what we need to do to ensure that this most cherished social service continues to represent the very heart of what it means to be Canadian. It is to this end that committee members from both sides of this chamber are devoting their efforts.

**Hon. Consiglio Di Nino:** Honourable senators, first, I suspect that there is not a Canadian alive who would argue with the points that Senator Kirby has raised and the questions he has asked. I think they would all applaud the effort of the committee.

I should like to know if the Prime Minister's Office has been in contact with either the Honourable Senator Kirby or the Leader of the Government with regard to the blue ribbon panel that we have heard about. Have we been asked to participate or will the committee be asked to be part of that panel?

**Senator Kirby:** Honourable senators, I do not know if there have been any discussions with the Leader of the Government. Obviously, I cannot answer as to whether or not anyone else has had those discussions. I have had no discussions with members of the Prime Minister's Office at all, other than to inform them of the work we are doing.

• (1520)

I have never had discussions with them about the prospect of whether they will or will not do a study. It does seem to me that, even if such a study were done, the work that this committee has done and is planning to do in terms of laying groundwork for discussion of some of the most important public policy issues will be an enormously valuable contribution to the debate in any event. However, beyond that, I cannot give any details because I do not know what the answer is.

**Senator Di Nino:** I wonder if our colleague would undertake to make a point of contacting the PMO to ensure that the work that he and colleagues from this chamber are doing will form part of that future process of public policy.

**The Hon. the Speaker *pro tempore*:** Your time has expired, Honourable Senator Kirby. Are you asking leave to continue?

**Senator Kirby:** Yes.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Pat Carney:** No.

On motion of Senator DeWare, debate adjourned.

## PUBLIC SERVICE WHISTLE-BLOWING BILL

### REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on National Finance (Bill S-6, to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers, with amendments) presented in the Senate on March 28, 2001.—(*Honourable Senator Murray, P.C.*).

**Hon. Lowell Murray** moved the adoption of the report.

Motion agreed to and bill read second time.

**The Hon. the Speaker** *pro tempore*: Honourable senators, when shall this bill be read the third time?

On motion of Senator Kinsella, bill placed on the Orders of the Day for third reading two days hence.

## DEFERRED MAINTENANCE COSTS IN CANADIAN POST-SECONDARY INSTITUTIONS

### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Moore calling the attention of the Senate to the emerging issue of deferred maintenance costs in Canada's post-secondary institutions.—(*Honourable Senator DeWare*).

**Hon. Mabel M. DeWare**: I was pleased that Senator Moore decided to launch an inquiry into the accumulated deferred maintenance costs in Canadian post-secondary institutions. I commend him for drawing the Senate's attention to this important issue, one that requires immediate action. I am hopeful that his fellow Liberals, especially those in cabinet, will sit up and take notice.

I was pleased that our honourable colleagues asked me to provide a regional perspective on this subject. It is an honour for me to speak to it today.

The issue of deferred maintenance costs was previously raised in this chamber in the context of Senator Atkins' inquiry into post-secondary education in Canada and during debate in reply to the Speech from the Throne. However, those costs form a unique and particular aspect of post-secondary education reform that deserves consideration on its own merits.

During my time as Minister of Advanced Education and Training in New Brunswick, I was involved in cabinet and government discussions regarding the state of our province's

post-secondary education system. It was not always easy to make decisions regarding the future of our province, especially ones that had to do with spending. However, we did our best to meet our current needs without sacrificing our long-term goals.

Others honourable senators from the Maritimes can certainly relate to this, including the former premiers of Nova Scotia, Senator John Buchanan, and of Prince Edward Island, Senator Catherine Callbeck. They are aware that we in the less populated regions of Canada face especially difficult decisions when it comes to spending and reinvesting in our universities, community colleges and other places of learning. The difficulty arises from several factors.

One problem that Ottawa faces is providing adequate equalization payments to Canadian regions. Premier Bernard Lord of New Brunswick has, along with other Atlantic premiers, called for a review of the way that equalization is calculated for small provinces such as New Brunswick.

Another problem is the level of transfer payments to the provinces for health, social programs and post-secondary education. It is a sad fact that since 1993 those transfers have been slashed. In 1993-94, the provinces received nearly \$19 billion from Ottawa under the Canadian Health and Social Transfer. That level of funding, although not overly generous, allowed us to take care of our immediate needs in the post-secondary sector while enabling colleges and universities to look after some of their long-term campus needs as well.

However, after the 1993 federal election we got hit with a \$6.5-billion cut to the CHST. The effects across Canada, especially in the outlying regions of the country, were felt immediately. This caused a significant financial shortfall for Canadian colleges and universities, which had also been coping with expanded enrolment. University enrolment is expected to continue to climb significantly.

A third factor is that it is hard to attract substantial long-term educational investments in New Brunswick when the entire population of the province is roughly that of a mid-size Ontario city. This was made evident by the distribution of university Chairs of Excellence, the majority of which were given to the Ontario universities.

Another example in this area is the federal government's infusion of \$750 million, through the Canadian Foundation for Innovation, into research and development initiatives in universities. It looks good on paper, but New Brunswick universities have been having trouble tapping into it. They must come up with 60 per cent of the project costs, and Ottawa will cover 40 per cent. The problem is that the Atlantic provinces, unlike other jurisdictions, are not in a position to cover that 60 per cent out of public-sector funds. Since the Canadian Foundation for Innovation was established in 1997, New Brunswick universities have been able to draw just \$5 million from the funds.



Honourable senators, when the financial pie that universities have to work with is so small, some pretty tough choices have to be made — choices about where money is going to be put and where cutbacks will have to be made. As a result of the cuts to the CHST, the federal government support for university core operating budgets on a per-student basis is 16 per cent less today in real terms than it was in 1992. Therefore, it has only been possible to fund the most immediate, and generally short-term, needs of our post-secondary institutions — needs such as instructors' salaries.

Long-term investment and maintenance costs had to be put on the back burner in the hope that better times are ahead and that we can catch up later. This, of course, was wishful thinking.

Throughout the mid-1990s to the late 1990s, places of higher learning were able to direct few, if any, dollars to long-term campus renewal. Those deferred costs accumulated year after year after year.

As Senator Moore has pointed out, Canada's post-secondary institutions are now facing huge bills for accumulated deferred maintenance. Those bills will not simply go away if we keep ignoring them; they will keep growing and piling up. In the meantime, the quality of our schools and universities and the education they provide will continue to deteriorate.

Let us look for a moment at how post-secondary education has been affected by the deferral of maintenance costs.

First, many buildings and other facilities are in bad shape. Some are literally crumbling and falling apart. Many fail to meet basic fire codes and disability access regulations. This has caused greater health and safety concerns for students, faculty and staff who live, study and work on campus.

Second, library collections of books and journals are falling below the standard enjoyed in other universities across North America, Europe and the world. And third, scientific and computer equipment is becoming obsolete, making groundbreaking research far more difficult to generate.

Many of our best and brightest students are leaving Canada to seek their higher education in schools where considerable thought has gone into keeping the school freshly updated and in tip-top condition.

Senators Moore and Callbeck did an excellent job of drawing the attention of this chamber to the problems that deferred maintenance practices cause for Canada's post-secondary institutions. I would like to elaborate on their observations from a New Brunswick perspective.

In April 2000, the New Brunswick Minister of Education, the Honourable Elvy Robichaud, rose in the legislative assembly to outline his department's operating estimates. He made particular reference to post-secondary education, remarking that:

It is imperative that post-secondary education is more accessible to New Brunswickers.

He also noted:

As requested by New Brunswick universities and recommended in the Collette Report, we are providing New Brunswick universities with a 2 per cent funding increase each year for the next three years.

The minister's statement reflected a keen understanding that we have to think in long terms — terms far past the span of our lives. He stated that, on behalf of the New Brunswick government:

We are also making a commitment to a multi-year funding formula, which will allow universities to commit to long-range plans and help stabilize tuition costs for students.

Honourable senators, before any meaningful change can occur, the federal government must loosen its purse strings because the amount that provincial education ministers can devote to universities and colleges is proportional to the amount of money that the province receives in transfers from Ottawa.

If positive changes are made, I believe that Minister Robichaud's job of providing long-term funding to places of higher learning will be easier, just as it will be for his counterparts in other provinces.

At present, Canadian universities are in urgent need of roughly \$1 billion to \$1.2 billion for repairs and renewals. "Urgent" means just that — those repairs cannot be put off any longer. The money is needed right now.

When one considers that decrease of funding with the rise in inflation and energy costs, and further combines it with the need to renew the crumbling infrastructures in New Brunswick's places of higher learning, the need is for an immediate federal reaction. We do not have to go far beyond New Brunswick's capital, Fredericton, to see that deferred maintenance costs are reaching the point of crisis.

The following is a quote from a letter sent by Dr. Elizabeth Parr-Johnston, President of the University of New Brunswick, to New Brunswick MPs Andy Savoy, Andy Scott, Charles Hubbard, Elsie Wayne and Dominic LeBlanc and to MLA Shawn Murphy on December 19, 2000. Dr. Parr-Johnston wrote:

One of our most pressing needs is the lack of financial resources to meet the challenges of deferred maintenance of our physical plant. Universities are facing mounting costs for repairs to classrooms, residences and other buildings...The total for accumulated deferred maintenance on our university campuses nationally has now reached at least the \$3.6 billion mark. At UNB, we conservatively face a staggering \$50 million in deferred maintenance costs. At the same time as we are facing mounting repairs and renewal bills, we are also investing heavily in new learning technologies in order to ensure that our students are receiving requisite knowledge and training in much-needed technology skills. Without new government investment in infrastructure, UNB will soon be at a critical juncture.

Honourable senators are aware that the issue of accumulated deferred maintenance is fast becoming one of the most pressing problems that affect Canadian campuses. As has already been noted in this chamber, an excellent study has been conducted on this matter, entitled "A Point of No Return: The Urgent Need for Infrastructure Renewal at Canadian Universities." It was authored by the Canadian Association of University Business Officers. That study, which collected data from 51 universities, estimated that a minimum of \$3.6 billion was needed to prevent further deterioration of universities. Of that amount, it was estimated that \$644 million was required by universities in Atlantic Canada.

**The Hon. the Speaker:** Honourable senators, I regret to advise the Honourable Senator DeWare that her 15-minute time limit has expired. Is she asking for leave to continue?

**Senator DeWare:** Yes, I would ask for leave to continue.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator DeWare:** Honourable senators, the study points out that five factors contribute to the decrepit nature of the Canadian post-secondary education system. First, our physical plants are aging. The average university building in Canada is 32 years old. Second, funding levels to the provinces are decreasing. Third, there is a lack of profile. Facility maintenance and renewal does not attract as much attention as do new building projects. Fourth, demands for new space to accommodate larger schools and student bodies changes the focus from taking care of existing resources to creating additional resources. Fifth, new codes and regulations, for example in the area of disability access, plus changes to the workplace technology, such as computers, reduce the capital resources that could be directed to stopping and reversing campus deterioration.

The chair of the steering committee that produced "A Point of No Return" has added to the debate with some rather chilling comments about the need for renovation of Canada's university facilities.

Before I cite some of those observations, however, I should like to recommend that the honourable senators concerned with the state of post-secondary education in Canada take a look at this hard-hitting report.

Many of the points raised by the Canadian Association of University Business Officers are very interesting and provide tremendous food for thought and information that is helpful to our deliberations.

The steering committee chair, Duncan Watt, who is Carleton University's Vice-President of Finance and Administration, certainly did not mince his words. He said:

The survey confirms our worst fears on the state of Canadian university campuses. University facilities have

deteriorated to the point where the capability of the physical infrastructure to support the academic mission and the core functions of learning and research is threatened.

Robert J. Giroux, President of the Association of Universities and Colleges of Canada, was clear about what is needed. He said:

In order to provide universities with the capability to meet maintenance needs over the longer term, it is essential that governments — both federal and provincial — increase the core operating funding of our universities.

Honourable senators, the first recommended policy option is the infusion of short-term catch-up funds to meet the urgent need for \$1.2 billion to prevent a national education disaster and an additional \$2.4 billion for the long-term reconstruction of our universities. The report suggests that this could be accomplished if the federal and provincial governments declare universities eligible to take part in a national infrastructure program as partners.

I would grant you, honourable senators, that with a substantial proposal from our federal government, we could also count on businesses and alumni getting involved in the program.

The second recommended policy option is a long-term increase in base operational funding to avoid ongoing problems of maintenance deferral.

The University of New Brunswick in Fredericton is the oldest registered university in Canada. In respect of this, I submit that increased funding for deferred maintenance costs is more than an issue related only to post-secondary education reform; it is also about preserving Canada's cultural heritage.

If we accept the point that universities are places of learning as well as historical and cultural treasures, I imagine that Heritage Canada could intelligently and capably investigate this issue.

The problem of deferred maintenance is as much a "vision" issue as it is a "policy" issue. Although the damage done by ignoring the problem is not all that visible in the short term, in the long term it could be disastrous.

Honourable senators, I shall close with this last observation. New Brunswick universities and colleges are suffering as a result of deferred maintenance problems. As a result, many of our best and brightest students look to other provinces and regions of Canada to satisfy their academic and intellectual curiosity. In effect, we suffer from an internal "brain drain" as well as an international one because we are a small province in a small region of Canada. From my perspective as a resident of New Brunswick, that is unacceptable.

I hope that Senator Moore's inquiry into the issue of accumulated deferred maintenance in Canada's post-secondary education institutions is a fruitful one, and I urge my colleagues and both sides of this chamber to engage in this matter further.

On motion of Senator Callbeck, debate adjourned.



[Translation]

## FRENCH-LANGUAGE BROADCASTING SERVICE

INQUIRY—DEBATE ADJOURNED

**Hon. Jean-Robert Gauthier**, rose pursuant to notice of Wednesday, January 31, 2001:

That he will call the attention of the Senate to the measures that should be taken to encourage and facilitate provision of and access to the widest possible range of French-language broadcasting services in francophone minority communities across Canada.

He said: Honourable senators, I wish to draw your attention to a topic of great interest to me. It is important that francophone minority communities be given a significant place in the vast range of television stations now available in the country — a range which, as we know, keeps growing with every passing year.

In today's world, the media and much of television programming play a decisive role in ensuring the survival of official language minority communities. In fact, according to many researchers, the media come right after family and school as the most important variable in influencing the development of an individual's identity in a minority context.

• (1540)

This is why francophone communities all over the country have been looking for years to get media tools in French, including magazines, newspapers, television and radio stations, and the Internet. These same groups are asking for a more prominent role in the development of new media broadcasting services.

Originally, a French presence of any kind was sought in radio or television broadcasts. So, efforts were made to ensure that Radio-Canada's radio and television signals could reach francophone communities across Canada.

With the advent of new French-language television stations such as RDI and TV5, communities began asking with greater insistence that these stations be accessible and reflect the realities of these communities. It can be said that RDI, the station that provides uninterrupted news and information, fulfilled that mandate by creating specific programming slots for francophones from the Atlantic region, Ontario, Western Canada and, of course, Quebec.

TVA, a Quebec television station, successfully applied for and obtained permission to have its signal be carried across the country and pledged to cover the local realities of francophone communities. That commitment has yet to be fulfilled. We have noted that there is lack of coverage on the part of TVA.

Today, minority francophone communities are not only asking for access to all French stations in Canada, but are also asking for the establishment of a television station totally dedicated to them, a station that would reflect their reality and with which their young people would identify, a station that would mention them, their towns, their streets, their performers and their issues, a station that would allow authors, producers, artists and performers to develop, a station that would actively contribute to their cultural expression, that would talk about their past and their future.

Last year, the Governor in Council asked the CRTC to consult the public and to report on the issue of official languages in French language broadcasting services and minority francophone communities.

The order was clear; the CRTC was to assess the availability and quality of French-language broadcast services in francophone minority communities in Canada; bring to light the discrepancies and challenges in French-language broadcasting to these communities; and propose measures to encourage and promote access to the broadest range possible of French-language broadcast services in francophone minority communities, as well as ensure that the Canadian broadcast system reflects the diversity of francophone communities across the country.

I will give you a bit of background. In 1999, the Ontario network TFO sought CRTC approval to require Quebec cable companies such as Vidéotron and Cogeco to carry the TFO signal in Quebec, on an optional basis. The CRTC decided it was not in the national interest to do so. I and many others found this unsatisfactory.

The government reacted by issuing the famous Order No. 2511, which I have just mentioned. The CRTC responded to this request in February of this year. I appeared before the CRTC in an effort to make my position on the subject understood. In a fairly voluminous document, I stated in conclusion that CRTC decision 2072 denying the application by the Ontario Educational Communications Authority, TFO, to have mandatory distribution of its French-language educational television service, TFO, in Quebec as part of an optional analog package, was contrary to the aim of the provisions of the Broadcasting Act and the many pious statements by the Governor in Council of the CRTC on its promotional objectives and the many statements they made on the French language in Canada.

It is hard to support decision 2072 by the CRTC in a context in which the Commission should be trying to preserve and promote the French language in Canada. As a commissioner of the CRTC pointed out in his dissenting opinion, the decision appears to be a capitulation to commercial interests. It manifestly does not consider the non-commercial elements on Canadian broadcasting.

I continued as follows:

It is the least that could be said that, having rejected this request to impose an obligation on the major cable distributors to carry the TFO signal in Quebec, the CRTC had before it and was prepared to examine, the authorization to distribute numerous French and European services.

This meant Euronews, Planète, Paris Première, Musique and Tropiques, which were all European networks. Yet they had just refused the only francophone network outside Quebec, TFO, inclusion among the programs to be carried in Quebec. I cannot understand why the application was turned down. And I certainly do not accept it!

There were public consultations, which generated a great deal of interest. Many communities came before the CRTC. Certain groups demanded the inclusion of this network because it reflected the Canadian reality. The Société des Acadiens et Acadiennes du Nouveau-Brunswick made the following statement when it appeared before the CRTC in Dieppe, New Brunswick, on October 10, 2000:

At this time, the situation is such that most of the major Canadian French-language networks have given up and have relegated to the ranks of folklore all the francophone and Acadian communities living in minority situations.

It therefore made a proposal, as follows:

The first proposal we wish to submit affects the establishment of a national public television network wholly devoted to the Acadian and francophone minority communities of Canada.

It even went so far as to give it a name, la Télévision des francophonies canadiennes, or the Network of Canadian francophonies. The Société nationale de l'Acadie, a coalition of provincial associations of Acadians in the four Atlantic provinces, also adopted this proposal for national public television.

The Fédération culturelle canadienne-française, a coalition of francophone cultural organizations across Canada, also proposed to the CRTC that it give precedence to the establishment of a national television network for the Canadian francophonie. It went beyond that to call for a working committee comprised of representatives of the communities and of the CRTC, mandated to examine all options that might achieve that objective, in order to select the best one. The organization and its membership wish to support a national television initiative that could provide the regions, as well as regional artists, producers, journalists and populations, with a choice platform on a national broadcasting entity.

Ask any francophone. They feel colonized by Montreal, because everything that is broadcast in French comes from

Montreal at the moment, unless they watch TFO. Unfortunately, many do not know of this network. RDI is doing its share, but we want a television network that reflects the Canadian reality — what is going on in Acadia is totally different from what is happening in Saskatchewan, Alberta, Manitoba or Ontario. Our identity is tied to the region we live in. We have to take this opportunity to make it known.

• (1550)

If we live in our own little space, separate from each other, and we are prevented from talking to each other, seeing each other, hearing each other or looking at each other, what sort of a country are we living in? A country that will become balkanized. This is not what I want. I want a Canada in which people reach out to one another, talk to each other, understand each other and also explain themselves to one another sometimes. It is not complicated.

I come back to the question of precedents. There are precedents, and they may be found here in Canada. I would like to speak for a few minutes about APTN. Are you familiar with APTN? It is a television network born of consultation with native groups — Inuit and Métis. They succeeded after many years in convincing the CRTC of the merit of their proposal. Today this network reflects the life of native peoples with its programming in native national languages, French and English. APTN gives aboriginal minorities an opportunity to get to know one another, to talk together and to be heard by the rest of Canada.

Honourable senators, I should like to try to convince the Senate that one of the roles of this country is to ensure that its minorities can survive, and, as I was saying earlier, television and radio are vital to the survival of official language minorities. They are no longer inaccessible thanks to technological change. With digital television, we will be able to broadcast to the country as a whole.

This is the right moment to rise to this challenge, to take our place by setting up, with the CRTC and governments, a national network to reflect the reality of Canada in the provinces.

[English]

**The Hon. the Speaker:** Senator Gauthier, I regret to advise you that your time has expired. Are you requesting leave to continue?

**Senator Gauthier:** Yes.

**The Hon. the Speaker:** Honourable senators, is leave granted for Senator Gauthier to continue?

**Hon. Pat Carney:** No.

**The Hon. the Speaker:** Leave is not granted.

On motion of Senator Corbin, debate adjourned.



## VIEWS OF BRITISH COLUMBIANS ON WESTERN ALIENATION

INQUIRY—DEBATE ADJOURNED

**Hon. Pat Carney** rose pursuant to notice of March 15, 2001:

That she will call the attention of the Senate to the views of some British Columbians on the subject of Western alienation and ways to reduce regional tensions.

She said: Honourable senators, today is the day for British Columbians to be heard in the Senate of Canada. I will be reading into the record views of some British Columbians with whom I met in Qualicum Beach recently at a fundraiser for arthritis. Approximately 200 people were in attendance and I asked them to give me their views. Their response was quite amazing. The views which they sent to me fill a binder, which I can table should the Senate desire. I promised that I would express in the Senate those views which are on the subject of western alienation.

Qualicum Beach is a pretty little community on the East Coast of Vancouver Island. Its name comes from the Aboriginal word for "chum salmon," which gives you an idea of its sport fishing capacity and of why it is one of the most popular resorts on the coast. It is a favourite place for British Columbians and people around the world. Over one-third of its population of about 6,700 people are over the age of 65. Many people from other parts of Canada come to Qualicum to enjoy life. The village was established in the late 1880s and was only connected to Nanaimo by road in 1894. Therefore, it is an old settlement in British Columbia, but a new settlement in Canadian terms.

Is the West alienated? Two years ago there was an editorial in *The Vancouver Sun* saying:

Is the West alienated? Let us count the ways. Liberals, unable to find signs of western dissatisfaction, had their blinkers on when it came to Nanoose Bay, illegal immigrants, fishing, leaky condos, and the scarcity of MPs west of Ontario.

Last month, the *Sun* did an update and produced a four-page special report on what the West wants, which indicates some of the reasons that British Columbians are unhappy in Confederation. Although I do not intend to read four pages of the *Sun* into the record, I will review the concerns of the people who took the time to write notes to me.

When I met with the people in Qualicum, I asked them to be positive. I asked them to explain ways that we could improve Confederation and the position of British Columbians and thus, achieve Canada's greater potential.

It is interesting to me that almost one-half of the responses dealt with parliamentary reform. British Columbians are interested in Senate reform, in an elected Senate, in renegotiating the terms of Confederation, and in electoral reform. They are also interested in greater representation in the Senate and the House of Commons and in a greater financial fair share.

• (1600)

The honourable senator has pointed out that New Brunswick has the population of a small Ontario city, yet it has much greater representation here — ten senators as compared to six for British Columbia. She is talking about the difficulties of redistribution and equalization.

A recent report by the Government of British Columbia entitled *A Preliminary Examination of Fair Share Issues* provided by the Intergovernmental Fiscal Relations and Income Security Branch of the Minister of Finance points out that British Columbian households contribute to Canada \$5,156 per year more than they receive. Households in British Columbia are net overall contributors to Canada. As a province, in terms of net fiscal flows, British Columbia contributes a net of \$5 billion more to Canada than it receives in federal transfer payments and in federal purchases of goods and services.

With that context, honourable senators, let me read some of the things that British Columbians told me and, through me, the Senate. I will not give the names, as is normally my practice. Since the Liberals have shown such a new attitude of intolerance, as exemplified by Minister Hedy Fry, I thought it safer for British Columbians not to include their names.

Some of the responses under parliamentary reform include the following:

I feel that B.C. needs more representatives. Representation by population needs to be reviewed on a regular basis. All numbers of senators representing provinces is very unequal. Ontario and Quebec have too many seats relative to the rest of the country. We need more balance. I appreciate that the CBC tries hard to decentralize. Networking with all the parties, like you suggested, to raise the problems and issues is important to the West. Renegotiate the Constitution.

Electoral reform would start to help. This would give every area some feeling of belonging to the whole if we can find a way to (a) make it work and to persuade the ruling party to implement it. The distribution of MPs should be reviewed regularly. We are seriously underrepresented here in B.C. for our burgeoning population, and we should look at the election of senators. We should make Parliament more representative of the population, that is, more seats for B.C. compared with seats from Nova Scotia or the Maritimes. Amend the Constitution, if necessary, which may be difficult but it is not impossible. Hold parliamentary sessions in other parts of Canada.

Remember, the thrust of this conversation, senators, was to improve Confederation, not to exacerbate it.

One way we could do that is by holding parliamentary sessions in other parts of Canada. Another suggestion: Could the European Union serve as something of a model?

We definitely need more representatives in B.C. I resent the fact that the Prime Minister was already elected before I even voted. Also, the counting of votes should happen after the last polling station is closed.

That deals with some of the responses under the topic of representation. I want to move on to how to consult with the public and the consultation process. These are some of the ideas:

I appreciate your comment about people from the West who cannot afford to go to Ottawa to present opinions. Most times, when Ottawa says it has consulted with Canadians, it is only Ontario Canadians or those who can afford the plane fares and time off. Is there any way government meetings could be held in major cities rather than in Ottawa?

Consider having the Senate meet across the country and go to the regions. Sponsor videoconferences at educational institutes that allow our young people to participate in discussions on issues that affect their futures.

Here is another suggestion from a former Ottawa bureaucrat. He said:

I worked for you during your tenure in International Trade. After three years of living in B.C., I too have become an alienated westerner.

He suggests:

All cabinet ministers should be required to spend a certain number of days in the provinces, east to west, and the same goes for senior bureaucrats. Federal-provincial exchange assignments for officials would help. Cabinet and parliamentary committee meetings could be held regularly outside Ottawa in provincial legislatures when they are not sitting.

He adds:

I could go on and on.

In terms of renegotiating the Constitution, I was particularly amused by this suggestion:

Having just read that, if they could, one in every three Canadians would move to B.C., perhaps we should remind Eastern Canada's aging population that they will most likely become citizens of B.C. before long and they should look to getting a better deal for us now before they arrive.

Honourable senators, the media came in for some criticism:

It appears that local B.C. groups should become aware of West Coast issues and continually bombard Ottawa with our concerns and solutions. B.C. people seem very complacent and do not get upset until it is too late. We are partly to blame for the alienation.

Another suggestion:

The kids I teach in social studies are interested and excited. Maybe you should be targeting a younger group to educate. I do teach government every year, and we have a great time.

Again, another says:

We in the West need to be more vocal, not sit back and say, 'Well, they won't listen; what can we do?' We in the West need a forceful but well-informed leader.

Another person suggests:

Canada is governed by the principle of divide and conquer, and it is working because we allow it.

The section on Senate reform is too long to include in this debate; I will do a separate session on it.

Another point that was raised, of course, is the federal issue of fair share and what our fair share is.

Also, in terms of media, these suggestions were put forward:

I feel that Western Canada is still considered to be the Wild West. Having seen the Canadian history series on CBC where our country began, in the centre and east, it seems to me that people think it is the most important place. Is it because our population is less, so we don't count? Or maybe our country is just too big. Why do so many people from Ontario retire here? I am sorry I don't have any solutions for the West.

Another suggestion:

Why, oh, why do all references in the media, when referring to the West, mean Alberta? What are we? Eastern Japanese?

Another:

When I lived in Toronto 25 years ago, I was largely unaware of the West. There was very little mention of the West and western concerns in the *Toronto Star*. I was shocked one day to learn that westerners hated and resented us. I always thought that we easterners supported the western provinces.

More comments about the CBC:

The CBC and all national publications could do more outside Ottawa and Toronto.

That point has been raised by another senator this afternoon.



In terms of fair share, someone wrote:

Herb Dhaliwal, the Minister of Fisheries, explained that the West got little in the way of federal aid for port improvement. Statistics show that many small, unimportant port facilities in Quebec and Maritimes got plenty. Dhaliwal said that B.C. MPs were not petitioning him enough. Did he not have enough high profile MPs in the West to advise him?"

Another view:

Eastern and central Canada must learn the West is also Canada. We need more representatives. We need an elected Senate. We need our share."

Another suggestion:

Certain decentralization of some of the departments to the provinces to help stop alienation of certain parts of the country.

My time is running out. There were several issues on the West's political and economic importance. There were a lot of issues about forestry and fishing.

One suggestion:

If each riding and each party running a candidate would run only a fisherman, we would be able to take our responsibility to get rid of some of the alienation we complain about.

Another point:

As far as forestry goes, we seem to be on the losing end. Free trade is hard on us in B.C. in terms of logging, et cetera. We are hardly recognized back east, and they do not seem to understand forestry as it is in B.C. Forestry and fishing have become our income.

I could go on.

**Senator Kinsella:** Take your time.

**Senator Carney:** Immigration is a big issue in the mail. Health and the transfers and the cuts in transfers are a big issue. Believe me, the mail bag fills all the time. I shall bring these comments forward to honourable senators in the future.

• (1610)

**Hon. Nicholas W. Taylor:** Perhaps the good senator from B.C. will allow me to ask several questions. I notice the complaint list, being a westerner myself, sounded very much like the usual symphony. The honourable senator mentioned that B.C. householders say they contribute \$5,000 a year more than they get and that they need more representation in the House of Commons. I wonder if the honourable senator, from her knowledge and position, was able to inform them that giving \$5,000 more than they are getting is a function of Confederation,

or has she figured out a way that every province can get more back than they put in and still hold Canada together? British Columbia is a rich province, as are Alberta and Ontario.

Regarding increased representation, does the House of Commons not now have equal representation?

**The Hon. the Speaker:** I have just been advised by the Table that the time for Senator Carney's speech, questions and comments has expired. Do you wish to adjourn the debate?

**Senator Kinsella:** Good idea.

**The Hon. the Speaker:** Senator Carney would have a right of reply if you spoke. In any event, the time has expired for this inquiry.

**Senator Taylor:** Honourable senators, possibly it could be extended to allow the honourable senator to answer. However, the deputy leader says it is good idea to adjourn the debate, in which case I will. I always do what he says.

On motion of Senator Taylor, debate adjourned.

## BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, is it your pleasure that the Senate do now adjourn during pleasure to await the arrival of the Deputy of Her Excellency the Governor General?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** I would like to ask something of my colleague opposite. Word has reached us on this side that the House of Commons has adjourned. My understanding of the procedure is that if the House of Commons is not sitting, the Usher of the Black Rod will find no one at home when she goes to summon them. Could I ask my colleague if he has the same information? Perhaps the Speaker could then give us direction if my information is correct.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I did receive the same information, but I am told that we must still proceed with the ceremony as scheduled. When the Usher of the Black Rod comes back to give us the message that the House has adjourned, the representative of Her Excellency the Governor General will retire and we shall adjourn.

[English]

**Senator Kinsella:** Honourable senators, if I have understood correctly, Senator Robichaud has suggested that we go through the steps of having the Usher of the Black Rod go and summon the House of Commons. If we know that no one is there, we are no longer seized with the issue of Royal Assent. Perhaps the minister is able to confirm that the House has adjourned, and then we might carry on with our business. I take it the minister can guide us.

**Hon. Sharon Carstairs (Leader of the Government):**

Honourable senators, I thank the Honourable Senator Kinsella. I want to inform the Senate of what has occurred in the other place. An unexpected adjournment motion was passed. As a result, we are not able to hold Royal Assent this afternoon. The earliest we could hold Royal Assent would be at approximately 10:15 a.m. tomorrow, because the House does not come back until 10 a.m. The House would still be in a state of adjournment at 9 a.m., were we to convene and sit at our usual time of 9 a.m. My suggestion is that we adjourn. We will obviously need leave to adjourn to 10 a.m., instead of the regular 9 a.m., because the rules provide that we sit automatically at 9 a.m. on a Friday. We can move the adjournment for 10 a.m. tomorrow and sit at that time.

Honourable senators, I would not ask you to remain for another day under the circumstance of a Royal Assent for a normal bill. This is not Royal Assent on a normal bill. This is Royal Assent on a supply bill. If we do not hold Royal Assent, there will be no money to operate the Government of Canada.

**Hon. Pat Carney:** Good idea.

**Senator Carstairs:** This is an extraordinary circumstance. I would ask all honourable senators to cooperate fully. To all those senators on both sides of the chamber who can possibly remain here for the Royal Assent ceremony tomorrow at approximately 10:15 a.m., I beg your indulgence.

**Senator Kinsella:** Honourable senators, on behalf of the opposition in the Senate, it is the two money bills for which Royal Assent is sought and obviously expected to be granted. The consequences of not having Royal Assent on those bills, which have been adopted by this place, would be quite adverse. Therefore, on behalf of the opposition, under the circumstances, and notwithstanding that I am tempted to introduce a motion that we adopt a constitutional resolution for the abolition of the House of Commons, we should be here tomorrow morning.

**The Hon. the Speaker:** Honourable senators, I need not comment on the exchange on the matter of order that involved the Deputy Leader of the Opposition, the Deputy Leader of the Government and the Leader of the Government.

I will not read the provisions in our rules, but I would refer all honourable senators to rule 135, in particular 135(2) and 135(4), which explain why we are going through the procedure that we follow.

Honourable senators, before the matter of order was dealt with, I had asked honourable senators: Is it your pleasure, honourable senators, that the Senate do now adjourn during pleasure to await the arrival of the Deputy of Her Excellency the Governor General? The matter of order was discussed and I referred all honourable senators to rule 135, which explains why we will go through this procedure even though the House of Commons is not sitting.

**Hon. Shirley Maheu:** Do we have the right to object to that?

**The Hon. the Speaker:** I suppose one could. Do you want to rise on a point of order, Senator Maheu?

**Hon. Shirley Maheu:** I rise on a point of order, honourable senators. If you are asking for unanimous consent to adjourn, I am afraid I cannot give it. We have people that have been waiting to hear Senator Settlakwe and myself all day long. I think it would be unfair to decide arbitrarily to adjourn now.

**Senator Kinsella:** We are not adjourning anyway.

**The Hon. the Speaker:** So it is clear to all honourable senators, we are not adjourning the Senate. We are adjourning during pleasure to await the arrival of the Deputy of Her Excellency the Governor General.

Perhaps I should read the provisions of our rules.

• (1620)

**Senator Carstairs:** Before His Honour does that, I should like to ask whether it is in order to get unanimous consent from this chamber to suspend rule 135.

**The Hon. the Speaker:** Honourable senators, I will read rule 135(3), which I think answers that question.

When the Speaker receives a message in accordance with the provisions of section (2) above, the Speaker shall interrupt any proceeding then before the Senate and read the said message. If a message is received during the taking of a standing vote...

I will not finish reading the rule, as it is quite lengthy.

My interpretation of rule 135 is that when Her Excellency the Governor General sends a letter and her deputy to this place, we receive her deputy. I will proceed in accordance with that rule. I will follow that procedure so that we may receive Her Majesty's representative, the Governor General's deputy, who is waiting outside.

I will hear other interventions on Senator Maheu's point of order, but if no honourable senators rise, I will carry on with the ceremony.

**Senator Carney:** I rise on a point of order, honourable senators.

In view of Senator Grafstein's point made on March 27 that we are bound by the *Rules of the Senate*, it has been pointed out that the rules are not being followed because the House of Commons is not sitting. Could His Honour please elaborate whether and how we are bound by the rules?

**The Hon. the Speaker:** We are following the rules, Senator Carney. Even if we do follow the rules, Royal Assent will not be completed because we will not receive representatives from the House of Commons in order that it might be completed. It was explained by Senator Carstairs that the Senate will sit tomorrow so that the ceremony can take place and be completed.

The Senate adjourned during pleasure.



• (1630)

**The Hon. the Speaker:** Honourable senators, I have been informed that the House of Commons has adjourned.

The sitting of the Senate was resumed.

## RECOGNITION AND COMMEMORATION OF ARMENIAN GENOCIDE

MOTION—DEBATE ADJOURNED

**Hon. Shirley Maheu,** pursuant to notice of March 27, 2001, moved:

That this House:

(a) Calls upon the Government of Canada to recognize the genocide of the Armenians and to condemn any attempt to deny or distort a historical truth as being anything less than genocide, a crime against humanity.

(b) Designates April 24th of every year hereafter throughout Canada as a day of remembrance of the 1.5 million Armenians who fell victim to the first genocide of the twentieth century.

She said: Honourable senators, I rise today to discuss a very serious matter: the genocide perpetrated against the Armenian people by the Government of the Ottoman empire between 1915 and 1918. I know that many senators may already be aware of the history, but for those who are not, a short recap is in order.

[Translation]

An 1882 census showed that, at the time, there were approximately 2.6 million Armenians living in the Ottoman Empire. Ottoman authorities feared that Armenians would demand their independence, just like Greece, Bulgaria and Romania had done a few decades earlier.

To solve the Armenian issue, the Ottoman government decided to completely exterminate the Armenian people living on the land that they had been occupying for over 3,000 years.

On April 24, 1915, Ottoman authorities arrested and executed over 2,300 intellectuals and leaders of the Armenian community living around the imperial capital of Istanbul. In the absence of Armenian political leaders, the Ottoman government announced the deportation of all Armenians living in the interior. Since all young men had already been conscripted into the imperial army because of the Great War, the Armenians who were deported were mostly women, children and old people.

[English]

Secret orders were sent to provincial governors to organize the complete massacre of all Armenians living in those regions.

Armenian men conscripted in the Ottoman army were murdered by their own Ottoman Turkish commanding officers. Most of the civilian population was either immediately put to death by death squads or killed en route to destination.

Forced to walk hundreds of kilometres with few belongings and no food or water, the survivors of these long "death marches" finally reached Syria, where they were received and helped by the local Arab population and Western missionaries.

Of the 2.6 million Armenians living in the Ottoman Empire before the genocide, only 400,000 remained in what became the Republic of Turkey, mostly in areas around Istanbul. Some 200,000 escaped to Eastern Armenia, a territory later annexed by the Soviet Union. The remaining 500,000 survivors found refuge in France and in the Middle East — Syria, Lebanon and Cyprus. Many eventually moved on to Western Europe, South America, the United States and Canada, creating the Armenian Diaspora that we know today.

As I stated earlier, there is overwhelming evidence that Ottoman authorities deliberately attempted to eradicate the Armenian people from lands they had occupied for almost 3,000 years. This is defined as a genocide.

In order to understand what we are talking about, Article II of the UN Convention on the Prevention of Punishment of the Crime of Genocide of December 11, 1948, defines a genocide as:

...any of the following five acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of that group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

Only one of these acts is necessary to consider events as a genocide. The historical evidence shows that the Armenians were subjected to at least four of these five acts between 1915 and 1918.

Despite huge amounts of documentary evidence, including German and Ottoman archival sources, and despite the recorded testimonies of the survivors of the massacres and published reports from foreign missionaries as well as diplomatic personnel stationed in the Ottoman Empire at the time, the Government of Turkey today denies that any of these things ever took place.

The deniers claim that there was a civil war in which both Turks and Armenians were killed, that the Armenians were rebelling against the authorities, which caused the fighting and the deaths. Faced with the evidence, they admit that there were some deportations but that only 300,000 people died. In other words, deny what happened, distort what happened and blame the victims.

[Translation]

Strangely, those who deny the historical truth do not have an answer to explain exactly who was leading the rebellion and who these rebels were, since the vast majority of young men had been conscripted into the Ottoman army and could therefore not take part in a rebellion or a civil war.

Given the figures provided by the census, they cannot explain where these 1.5 million people went in less than two and a half years.

[English]

• (1640)

In the last few years, the Parliaments of many countries and two provincial governments, Quebec and Ontario, have chosen to recognize the Armenian genocide as a historical fact. France was the most recent to do so, in January 2001. Belgium, Greece, Italy, Germany and Sweden, as well as the European Parliament, have also recognized it.

Some governments, including Canada's, accept the historical evidence, including the deaths of 1.5 million people, but refrain from using the term "genocide" for fear of upsetting Turkey.

[Translation]

Canada's Armenian community now numbers close to 100,000 strong and these Canadian citizens are entitled to demand that their Parliament and their government acknowledge the reality of what happened to their ancestors.

When our European ancestors acknowledge the reality of the past, Canada has a duty to do likewise. Canada's reputation as a champion of human rights and freedoms is at stake. We need to shout out loud and clear that this crime against humanity is unacceptable, even 85 years after the fact.

[English]

Most important, we must recognize the Armenian genocide to show the world that one cannot get away with denial. If we allow the Armenian genocide to be denied today, will we allow Holocaust deniers to get away with such lies a few years from now?

Honourable senators, for over a century, Canada has been a peaceful and democratic home for millions of victims of racial discrimination and genocidal actions. It is my hope that Canada

will not only inform and educate its people of past genocides, but also work toward the creation of an international system of justice that will prevent further genocides from happening.

Why this recognition now, after 85 years? It is because the denial of the historical record continues, and the act of denial is a continuation of the genocide itself. It will not allow people to mourn and move on.

The time is ripe for reconciliation. Today, Turkey is aspiring to join the European Union and must face its dark past in order to move forward toward the future. By adopting resolutions such as this one and by talking about this important issue, Canada encourages Turkish authorities to begin a real dialogue with Armenia and with the Armenian diaspora. This is the only way this issue will be resolved. Canada must encourage it.

As a friend and ally of Turkey, Canada must help her along this difficult path. By doing so, we are not hurting Turkey; we are helping her. As stated by Murat Acemoglu, of the *Armenian Reporter International*:

It is obvious that the Armenian Genocide Resolutions adopted across Europe have become a catalyst, not only to stimulate the debate in Turkish society but also to give a new fresh impetus to reconciliation efforts by the leftist forces and Ankara government as well, as we witnessed in the recent Istanbul conference on February 14 where the Turkish Foreign Minister took a conciliatory tone against Armenia.

After the First World War, the world failed to adequately recognize the ultimate evil that had occurred to the Armenians. By not denouncing what had happened and the perpetrators who were responsible, we left the door ajar for it to occur again. Unknowingly, by not saying anything at the time, we allowed that ultimate evil to reappear 20 years later, during World War II.

Some people, however, are better students of history than others. I want to read a quote from a person who was influential in the planning and execution of the Holocaust during the Second World War. In a speech to Nazi generals and German army commanders on August 22, 1939, the man said:

I have placed my death units in readiness with orders to them to send to death, mercilessly and without compassion, men, women and children of Polish derivation and language. Only thus shall we gain the living space which we need. Who, after all, speaks today of the annihilation of the Armenians?

The name of the man uttering these words was Adolf Hitler, speaking one month before invading Poland and sparking World War II. The answer to Hitler's rhetorical question must be "We do." We must say so strongly and unequivocally. To do otherwise, would be to invite others to do what the Ottoman government and the Nazis did.



[Translation]

Canadians of Armenian descent implore the Government of Canada not only to recognize and condemn the Armenian genocide, but also to speak out against any form of servitude, destruction or oppression of a people, a state or a nation. Moreover, the Armenian community hopes that the Government of Canada will condemn any attempt to deny, distort or minimize the facts of the genocide.

[English]

For a number of years, Armenians all over the world have commemorated the genocide on April 24 of each year.

[Translation]

With this resolution, we call upon Canada to recognize these days of terror with an official national day, this very date.

[English]

In conclusion, I hope that I was able to convince all my honourable colleagues that the Armenians have suffered for long years and continue to be haunted by cruel memories that are passed on from generation to generation — and it does affect other generations.

In order to break this sad pattern, it is time to recognize this destruction of a people and call it what it is — a genocide.

I thank honourable senators for their attention.

With your permission colleagues, after being advised that reading the preamble to my resolution would have been out of order, I ask permission to have the text appended to my debate.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

(For text of preamble, see Appendix, p. 524.)

[Translation]

**Hon. Raymond C. Setlakwe:** Honourable senators, I wish to express my support of the motion by the Honourable Senator Maheu, speaking out of sorrow, but also out of a desire to preserve a historical memory.

Jean d'Ormesson has written that a great family is one with traditions and with memories of its past. The great Armenian family is such a family.

For these reasons, I point to the disappearance at the hands of the Turks of members of five of my grandfather's brothers and three of my mother's brothers.

[English]

Armenians everywhere claim a recognition of this genocide by the Turkish government and a symbolic restitution. Had this been

done before the Holocaust, Hitler would not have been able, as my colleague has just pointed out, to say in 1939, "Who remembers the Armenians?"

• (1650)

Until this historic act of barbarism is recognized, the world and all Armenians will remember, and the words of the poet will ring true:

Out of the night that covers me,  
Black as the Pit from pole to pole,  
I thank whatever gods may be  
For my unconquerable soul.

Honourable senators, I should like to quote from an article that appeared in the *International Herald Tribune* on March 14, 2001, in which Paul Glastris writes:

After more than 80 years, the public are coming around to the view that what the Armenians suffered was not a tragic wartime loss, but a deliberate genocide.

This shift is most obvious on the political front. About two decades ago, the Armenian diaspora began trying to persuade Western governments to pass resolutions acknowledging the genocide. Lobbyists funded by the Turkish government thwarted almost every attempt.

With opinion turning against the Turkish position, some former government officials in Turkey are advocating a new approach; convening a panel of scholars from around the world and giving them full access to all archives to look at the historical record.

Ending this dispute would help Turkey achieve its primary national goal: entry into the European Union. Not ending it would put Turkey on a collision course with nations that might pass Armenian genocide resolutions.

I would hope that Canada would soon be among those nations.

[Translation]

Here, in translation, is an extract from an editorial written by Robi Ronza, which appeared in Milan's *Il Giornale*.

A recent vote in the French parliament, subsequently supported by President Chirac, revived an issue which Europe cannot afford to forget: the first genocide of the 20th century, the genocide of the Armenians of Anatolia, carried out by the Turks in 1915. Europeans must adopt a firm attitude towards Turkey's obstinate denial of an extermination that cost many people — perhaps a million and a half, but at least 850,000 — their lives, and its refusal to conduct a just national examination of conscience in this regard. The genocide of the Armenians was the first genocide in the century which has just ended and we know that it was influential in Hitler's thinking when he conceived the idea of the Holocaust.

If, however, we compare Turkey's current attitude vis-à-vis this issue with all that Germany has said and done to recognize its faults and to compensate the survivors as well as the descendants of the victims of Nazi exterminations, we must conclude that present-day Turkey cannot aspire to enter the EU, not just because it is not a part of Europe, but also because, even today, it will not respect human rights and observe the democratic principles without which one cannot lay claim to the Western cultural heritage, even by affiliation.

However, we must demand that Turkey show this courage. It needs such courage if it wishes to establish and consolidate a special relationship with Europe, but it also needs it if it wishes to free itself of the burdensome heritage of the Kemal myth, which in reality is no longer helping it to become the country it aspires to be.

Honourable senators, it is because humanity is far from being safe from a repetition of this massacre that it is all the more important that the massacre be recognized. Africa and many other places in the world are threatened by this sort of barbaric behaviour, which leads to the annihilation of peoples.

[English]

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I have a question to ask. If the honourable senator cannot answer, I would ask leave for Senator Maheu to answer.

I do not see what force this resolution will have if it is passed as it is presently written. The resolution asks that this house designate April 24, but the resolution will not have the force of law. Rather, it will be an expression of the majority of this house. I would think that the honourable senator would reinforce her intent if she asked the Parliament of Canada and sent such a motion over to the other place to have it ratified. If it is passed in both Houses, then it would have the force of law and be recognized legally. Otherwise, as it is written now and as I interpret it, it is really just an expression from this chamber. It will end here.

**The Hon. the Speaker:** Honourable senators, is leave granted to allow Senator Lynch-Staunton's question to Senator Maheu?

**Hon. Senators:** Agreed.

**Senator Maheu:** I thank the Honourable Senator Lynch-Staunton for his question. I was well aware that the Senate cannot make this resolution a law.

A private bill sponsored by the only Armenian member of Parliament, Mr. Sarkis Assadourian, is progressing through the House of Commons. Whether it is made votable is another point.

If we cannot have a date declared, then at least Canadians will be aware of what occurred. My hope is that when the Armenian community comes to Parliament Hill on April 24 to reflect upon this genocide, most Canadians will know that the day has been dedicated to them. Whether it be through law or not, the symbolic fact is essential.

Perhaps in helping Mr. Assadourian, we may have a positive influence on the members of the other place.

**Hon. Consiglio Di Nino:** Honourable senators, both Senator Prud'homme and Senator Wilson indicated to me that they wished to speak to this issue, as do I.

On motion of Senator Di Nino, debate adjourned.

[Translation]

## ADJOURNMENT

Leave having been given to revert to Notice of Motions:

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Friday, March 30, 2001, at 10 a.m.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until Friday, March 30, 2001 at 10 a.m.



**APPENDIX**  
(see p. 522.)

**PREAMBLE**

**TO THE RESOLUTION**

**OF**

**THE HONOURABLE SHIRLEY MAHEU**

**MARCH 29, 2001**

**RESOLUTION  
ON THE RECOGNITION AND  
COMMEMORATION  
OF THE ARMENIAN GENOCIDE**

WHEREAS on April 24, 1915, the Ottoman Turkish authorities arrested, and later executed, over 2300 prominent leaders of the Armenian community in Istanbul, without cause or reason, but for their race and religion, signalling the beginning of the first genocide of the 20th century;

WHEREAS using the First World War as a cover for their operations, Ottoman Turkish authorities ordered and carried out the systematic slaughter of Armenians living in six provinces of Eastern Anatolia and Cilicia, in an effort to exterminate the Armenian presence in those regions;

WHEREAS the Ottoman Turkish authorities exiled the survivors of the massacres from their homes and native lands;

WHEREAS the historical record clearly demonstrates that the events occurring between 1915 and 1918 that resulted in the massacre and exile of the Armenian population of Eastern Anatolia and Cilicia constitutes a genocide as defined by international customary law and by the *United Nations Convention on the Prevention and Punishment of Genocide* of December 11th, 1948;

WHEREAS the government of the Republic of Turkey distorts the historical record and denies that the Armenian Genocide took place;

WHEREAS the parliaments of Argentina, Belgium, France, Greece, Italy, Lebanon, Russia, Sweden, Uruguay and the European Parliament and the World Council of Churches have condemned the massacres of the Armenian population of the Ottoman Empire and recognized them as constituting a genocide;

WHEREAS the Armenian Genocide has also been recognized by the National Assembly of Quebec, the Legislative Assembly of Ontario and the Canadian Council of Churches;

WHEREAS thousands of Armenian Genocide survivors and their descendants now reside in Canada as Canadian citizens and enrich Canada's multicultural heritage;

WHEREAS Canada is a country which prides itself on the rule of law and of the respect of human rights and liberties;

WHEREAS April 24th has become a symbolic date of remembrance for Armenian-Canadians and for people of Armenian origin all over the world;

WHEREAS the resolution of the Armenian Genocide issue could help peacefully resolve several long-lasting conflicts in the South Caucasus

**BE IT RESOLVED THAT THIS HOUSE**

a) Calls upon the Government of Canada to recognize the genocide of the Armenians and to condemn any attempt to deny or distort a historical truth as being anything less than a genocide, a crime against humanity.

b) Designates April 24th of every year hereafter throughout Canada as a day of remembrance of the 1.5 million Armenians who fell victim to the first genocide of the 20th century.



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CANADA

# Debates of the Senate

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1st SESSION

• 37th PARLIAMENT

• VOLUME 139

• NUMBER 23

---

OFFICIAL REPORT  
(HANSARD)

**Friday, March 30, 2001**

---

THE HONOURABLE ROSE-MARIE LOSIER-COOL  
SPEAKER *PRO TEMPORE*





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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Friday, March 30, 2001

The Senate met at 10 a.m., the Speaker in the Chair.

Prayers.

[Translation]

### ROYAL ASSENT

#### NOTICE

**The Hon. the Speaker *pro tempore*** informed the Senate that the following communication had been received:

RIDEAU HALL

March 30, 2001

Sir,

I have the honour to inform you that the Honourable Ian Binnie, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, will proceed to the Senate Chamber today, the 30th day of March 2001, at 10 a.m., for the purpose of giving Royal Assent to certain bills.

Yours sincerely,

Anthony P. Smyth  
*Deputy Secretary, Policy, Program and Protocol*

The Honourable  
The Speaker of the House of Commons  
Ottawa

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, that the Senate now adjourn during pleasure to wait for the arrival of the Honourable the Deputy Governor General?

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned during pleasure.

### ROYAL ASSENT

The Honourable Ian Binnie, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General,

having come and being seated at the foot of the Throne, and the House of Commons having been summoned and being come with their Speaker.

The Honourable Peter Milliken, Speaker of the House of Commons, then addressed the Honourable the Deputy Governor General as follows:

May it please Your Honour.

The Commons of Canada have voted certain supplies required to enable the Government to defray the expenses of the public service.

In the name of the Commons, I present to Your Honour the following bills:

An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001 (*Bill C-20, Chapter 01, 2001*)

An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002 (*Bill C-21, Chapter 02, 2001*)

To which bills I humbly request Your Honour's assent.

The Honourable the Deputy Governor General was pleased to give the Royal Assent to the said bills.

The House of Commons withdrew.

The Honourable the Deputy Governor General was pleased to retire.

The sitting of the Senate was resumed.

### BUSINESS OF THE SENATE

**Hon. Eymard G. Corbin (Acting Deputy Leader of the Government):** Honourable senators, I move that the items on the Orders of the Day and on the Order Paper remain in their current order.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is it your pleasure to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

**ADJOURNMENT**

**Hon. Eymard G. Corbin (Acting Deputy Leader of the Government):** Honourable senators, with leave of the Senate, and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Tuesday next, April 3, 2001, at 2 p.m.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until Tuesday, April 3, 2001, at 2 p.m.





**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(2nd Session, 36th Parliament)**  
**Friday, March 30, 2001**

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-2	An Act respecting marine liability, and to validate certain by-laws and regulations	01/01/31	01/01/31	—	—	—	01/01/31		
S-3	An Act to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts	01/01/31	01/02/07	Transport and Communications					
S-4	A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	01/01/31	01/02/07	Legal and Constitutional Affairs	01/03/29	0			
S-5	An Act to amend the Blue Water Bridge Authority Act	01/01/31	01/02/07	Transport and Communications	01/03/01	0	01/03/12		
S-11	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	01/02/06	01/02/21	Banking, Trade and Commerce					
S-16	An Act to amend the Proceeds of Crime (Money Laundering) Act	01/02/20	01/03/01	Banking, Trade and Commerce	01/03/22	0			
S-17	An Act to amend the Patent Act	01/02/20	01/03/12	Banking, Trade and Commerce					
S-23	An Act to amend the Customs Act and to make related amendments to other Acts	01/03/22							
S-24	An Act to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence	01/03/27							

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-20	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	01 03 21	01-03-27	—	—	—	01 03 28	01 03 30	1 01
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01 03 21	01 03 27	—	—	—	01 03 28	01 03 30	2 01



## COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
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## SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	01/01/31	01/01/31	National Finance	01/03/28	5			
S-7	An Act to amend the Broadcasting Act (Sen. Finestone, P.C.)	01/01/31	01/02/07	Transport and Communications					
S-8	An Act to maintain the principles relating to the role of the Senate as established by the Constitution of Canada (Sen. Joyal, P.C.)	01/01/31							
S-9	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	01/01/31							
S-10	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	01/01/31	01/02/08				01/02/08		
S-12	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	01/02/07	01/03/27	Social Affairs, Science and Technology					
S-13	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	01/02/07							
S-14	An Act respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day (Sen. Lynch-Staunton)	01/02/07	01/02/20	Social Affairs, Science and Technology					
S-15	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	01/02/07	01/03/01	Energy, the Environment and Natural Resources					
S-18	An Act to Amend the Food and Drugs Act (clean drinking water) (Sen. Grafstein)	01/02/20							
S-19	An Act to amend the Canada Transportation Act (Sen. Kirby)	01/02/21							
S-20	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	01/03/12							
S-21	An Act to guarantee the human right to privacy (Sen. Finestone, P.C.)	01/03/13							

S-22	An Act to provide for the recognition of the Canadien Horse as the national horse of Canada (Sen. Murray, P.C.)	01/03/21
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PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-25	An Act to amend the Act of incorporation of the Conference of Mennonites in Canada (Sen. Kroft)	01/03/29							





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Friday, March 30, 2001

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CANADA

# Debates of the Senate

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1st SESSION

• 37th PARLIAMENT

• VOLUME 139

• NUMBER 24

---

OFFICIAL REPORT  
(HANSARD)

**Tuesday, April 3, 2001**

—  
**THE HONOURABLE ROSE-MARIE LOSIER-COOL**  
**SPEAKER *PRO TEMPORE***

This issue contains the latest listing of Senators, Officers of the Senate, the Ministry, and Senators serving on Standing, Special and Joint Committees.

APR 18 2001

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## THE SENATE

Tuesday, April 3, 2001

The Senate met at 2 p.m., the Speaker *pro tempore* in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### INTERNATIONAL TRADE

##### UNITED STATES— RENEWAL OF SOFTWOOD LUMBER AGREEMENT

**Hon. Ross Fitzpatrick:** Honourable senators, yesterday the U.S. lumber coalition announced that it is petitioning for outrageous countervailing duties of 40 per cent and anti-dumping duties from between 28 to 38 per cent against Canadian softwood lumber.

As honourable senators know, this is a counterfeit claim. The softwood lumber industry is one of the most important and technically advanced industries in Canada, and its success has fairly penetrated the markets of the United States.

The forest products industry makes the largest contribution to Canada's wealth, as measured by the gross domestic product, and is a major employer to all of Canada. Directly and indirectly, it is responsible for close to 1 million jobs.

In my province, British Columbia, forestry is still the number one industry and it is responsible, directly and indirectly, for 175,000 jobs. British Columbia has the largest number of sawmills of any province and these mills employ close to 22,000 workers. Sawmills in British Columbia's interior are more competitive than their counterparts in the U.S. — and, I must add, without any subsidies. In 1999, B.C. produced 13.4 million board feet of lumber, and that year 47 per cent of the lumber exported to the United States came from British Columbia. The total value of B.C. softwood lumber exports in 1999 was \$7.5 billion.

The view of Canada's industry from coast to coast has been that the Softwood Lumber Agreement should not be renewed, with the goal of achieving real free trade. The action taken yesterday in no way represents free trade but smacks of blatant protectionism. I am pleased to see the Minister of International Trade respond forcefully to defend the interests of our softwood lumber industry and fight aggressively for free trade against these unfounded allegations of subsidies by the U.S. coalition.

First of all, Canadian provinces do not subsidize their lumber industry. For the past 20 years, timber pricing by our provinces has been subject to three countervail duty investigations. Each time, the U.S. has been unable to sustain the U.S. industry's allegations of subsidies. In fact, Canada's victory last Thursday on the drilled-notched lumber dispute with the U.S. under the Softwood Lumber Agreement is further proof not only that international trade rules work but also that the Government of Canada defends our industry vigorously.

I am pleased to say that this government is continuing to consult industry and all provincial governments to defend the interests of Canada's softwood lumber industry —

**The Hon. the Speaker *pro tempore*:** Honourable senator, your time has expired.

#### CANADIAN CROSS-COUNTRY SKI CHAMPIONSHIPS

##### CONGRATULATIONS TO TEAM FROM TIMMINS, ONTARIO

**Hon. Isobel Finnerty:** It is my pleasure today, honourable senators, to draw to your attention the recent Canadian National Cross-Country Ski Championship in Valcartier, Quebec. The competition of both the junior national and senior national divisions took place at the same time.

To compete in the nationals, athletes from across Canada were required to qualify in their own province or territory, after having participated in a gruelling winter-long series of competitions. Each province and territory send their top skiers to this important annual Canadian sporting event.

Honourable senators, I am very proud to salute the team from my own hometown of Timmins, the Porcupine Ski Runners, under the expert direction of coach Lorne Lutha. The team members are David Foster, Matt Copps and brothers Robb Martin and Chris Martin. This team placed sixth in the ski competition. However, of particular note is the first-place victory of 14-year-old Robb Martin in the Long Distance Classical event. His gold medal at the junior nationals is both a tribute to his hard work and to the community of Timmins, where many fine athletes have been trained.

Honourable senators, perhaps I may be forgiven by you if I mention something personal about Robb Martin and his brother and teammate, Chris Martin. Robb and Chris are the grandsons of my brother, Ross Church of Timmins. This makes me their very proud great aunt!

## CANCER AWARENESS MONTH

**Hon. Mabel M. DeWare:** Honourable senators, we all feel a stirring of hope when the first daffodil blooms after a long winter and, with them, the promise of a glorious summer.

• (1410)

In New Brunswick, it will probably be fall before we see the daffodils.

For cancer victims, their families and friends, hope is magnified many times. Daffodils also bloom with a promise that cancer can be beaten. They have been adopted as a symbol of hope by the Canadian Cancer Society.

Honourable senators, I am pleased to draw the attention of this chamber to the fact that April is Cancer Awareness Month in Canada. In April each year, the Canadian Cancer Society undertakes a variety of public education activities in support of cancer prevention, detection and treatment. One in three Canadians will develop some form of cancer in his or her lifetime, so the importance of these events cannot be underestimated.

April is also a major fundraising focus for the Canadian Cancer Society whose work is funded entirely by donations. The donations that we are asked to give during Cancer Awareness Month are put to excellent use all year long.

Thanks to our contributions, the Canadian Cancer Society is the largest single provider of funds for cancer research in the country. They also enable us to provide a wide range of public education programs and patient services and, perhaps more than anything else, they allow us to give such precious hope to so many Canadians.

Honourable senators, I am proud to be wearing a ribbon provided by the Canadian Cancer Society to show support for Cancer Awareness Month in Canada, and I encourage all of senators to do the same, as well as to show our support in other ways.

[Translation]

## NATIONAL ARCHIVES OF CANADA

**Hon. Jean-Robert Gauthier:** Honourable senators, in 1984, when the new Minister of Communications, Marcel Masse, was visiting his department, he was shown some of the caricatures from the National Archives collection. When he asked whether these had ever been exhibited, and was told they had not, he expressed surprise that these witnesses to the times in which they were created were left in the shadows. As a result, the National Archives acquisitions program was born.

On January 26, 1986, a meeting was held in Toronto with most of Canada's editorial cartoonists. Discussions centred on the

preservation and dissemination of editorial cartoons and the possibility of creating a Canadian Centre of Caricature.

An advisory committee mandated to define an acquisitions policy was struck. Later, representatives were selected from among the cartoonists at the inaugural meeting of the Association of Canadian Editorial Cartoonists, held in Winnipeg on June 26 and 27, 1986.

After two changes of ministers, the Canadian Centre of Caricature was opened on June 6, 1989 at 136 St. Patrick Street, in Ottawa, in my former riding of Ottawa-Vanier. Over the years, it housed numerous exhibitions, produced a collection of the works of Norris and Lapalme, and received numerous school tours. Gradually, the centre became a popular tourist attraction.

During that time, there were differences of opinion at the National Archives because of the irreconcilable objectives of preservation on the one hand and exhibiting of the collection on the other. With a change of government, coupled with the departure of the originator of the project after the election, an accumulation of inventory, due to staff cuts, and the budget reductions of the time, the acquisitions program was cut back and the centre closed its doors in the mid 1990s.

With the creation of the National Portrait Gallery in the former U.S. embassy, right across from Parliament Hill, we feel that it is finally time to exhibit some of the caricatures that number among the 20,000 original works in the National Archives collection.

We should be proud to be able to exhibit the work of such accomplished artists as Sid Barron, J.W. Bengough, Roland Berthiaume (Berthio), Ed Franklin, Jean-Pierre Girerd, Norman Hudon, Raoul Hunter, Tom Innes, Henri Julien, Robert Lapalme, Duncan Macpherson, Ed McNally, Len Norris and Doug Wright, to name but a few.

American museums show no hesitation in showcasing their caricatures. Mexico has its own museum, the Museo de la caricatura.

Since the new gallery is still at the fledgling stage, we trust that it is not too late to include this totally original art form from the editorial pages of Canada's newspapers, the editorial cartoon.

## PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

**The Hon. the Speaker *pro tempore*:** Honourable senators, before moving on to the next item on the Order Paper, I should like to draw attention to the presence of pages from the House of Commons, who are here this week as part of the exchange program with the Senate.

[English]

Jennifer Hefler is pursuing her studies in the Faculty of Arts at the University of Ottawa. Her major is communications, and she comes from Halifax, Nova Scotia.



Megan Holwatt is enrolled in the Faculty of Arts at the University of Ottawa, where she is majoring in history. Ms Holwatt is from Kensington, Prince Edward Island.

[English]

• (1420)

Daniel O'Brien is enrolled in the Faculty of Public Affairs and Management at Carleton University. Mr. O'Brien is from St. John's, Newfoundland and Labrador.

Welcome to the Senate. I hope that your week here will be valuable.

[Translation]

## ROUTINE PROCEEDINGS

### CANADIAN HUMAN RIGHTS COMMISSION

#### REPORT TABLED

**The Hon. the Speaker *pro tempore*:** Honourable senators, I have the honour to table the report of the Canadian Human Rights Tribunal for the year 2000, pursuant to subsection 61(3) of the Canadian Human Rights Act.

#### ADJOURNMENT

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding Rule 58(1)(h), I move:

That, when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, April 4, 2001, at 1:30 p.m.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

Motion agreed to.

### FINANCIAL CONSUMER AGENCY OF CANADA BILL

#### FIRST READING

**The Hon. the Speaker *pro tempore*:** informed the Senate that a message had been received from the House of Commons with Bill C-8, to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions.

Bill read the first time.

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, placed on the Orders of the Day for second reading two days hence.

## QUESTION PERIOD

### MULTICULTURALISM

#### EVIDENCE IN SUPPORT OF COMMENTS BY MINISTER

**Hon. Donald H. Oliver:** Honourable senators, I have a question for the Leader of the Government in the Senate. It relates to the Minister of State for Multiculturalism.

One of the precious and unique things about Canada is our diversity. Canada is a country of 30 million people who speak many languages from different cultures. This phenomenon is often referred to as multiculturalism. The Minister of State for Multiculturalism, Hedy Fry, has been under fire from the media and all Canadians, generally, over her allegations of cross-burning incidents in Prince George and Kamloops, British Columbia. Is the minister not aware that this controversy is doing irreparable harm to Canadian diversity and multiculturalism? If the minister's allegations are unsupportable, a large number of innocent Canadians have been wronged. They are entitled to more than a mere apology.

When will the government show some leadership and either produce the evidence in support of the minister's allegation or accept her resignation?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, clearly, the honourable senator is absolutely correct when he talks about the diversity of people in this nation, who speak many different languages. That is the heartbeat of the multicultural nature of our nation.

The minister has made apologies in the House. As well, the minister has apologized to the people of Prince George and Kamloops. One hopes that this can be put aside now so that the honourable minister may continue her important work in the areas of multiculturalism and the status of women.

**Senator Oliver:** Honourable senators, if in fact there is no evidence of cross burnings of the nature and type described by the minister, then hundreds of thousands of innocent people have been wronged, and it behooves the minister to resign if that evidence cannot be produced. If Ms Fry will not resign, will the Prime Minister not show some leadership in requesting her resignation?

**Senator Carstairs:** Honourable senators, we have to be careful about attaching the description "hundreds of thousands of people." Prince George is not quite that large. However, that is not the point. It does not matter how many people she offended; the minister misspoke herself and, as a result, she made a full and unqualified apology.

**Senator John Lynch-Staunton:** Where is the letter from the mayor?

## INTERNATIONAL TRADE

UNITED STATES—RENEWAL OF SOFTWOOD LUMBER  
AGREEMENT—MARITIME LUMBER ACCORD

**Hon. John Buchanan:** Honourable senators, I have a question for the Leader of the Government in the Senate. Over the next number of weeks, negotiations will take place on the softwood lumber crisis. I know that the minister is aware of the fact that this industry represents literally thousands of jobs in Atlantic Canada. The industry contributes in excess of \$1 billion dollars to our economy. The Maritime accord, which was negotiated in the 1980s, and I took part in those negotiations, exempted the Atlantic provinces in respect of the Softwood Lumber Agreement. The reason was quite simple: In excess of 75 per cent of our exports to the United States come from private woodlot owners as opposed to government-owned land. Therefore, the stumpage subsidies that apply in other parts of Canada, mainly in British Columbia, do not exist, for all intents and purposes, in the Atlantic provinces.

However, we are now included in the whole mix. The Maritime premiers, the Maritime Lumber Bureau and members of Parliament agree that we must not be lost in the shuffle in respect of those negotiations. We must enjoy the continued exemption, because we are not involved in the subsidy war.

Honourable senators, will the honourable minister tell us this afternoon that the Maritime provinces will be included in negotiations and that Minister Pettigrew will ensure, to the best of his ability, that the exemption remains?

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his question. The correct word is "exemption" because that was the deal that was struck. However, in reality, it is the Atlantic provinces that have managed it correctly — they are, if you will, the original free traders in the whole issue of softwood lumber. We should be congratulating them. Although the word "exemption" is technically correct, I should like to think that they are the model, as opposed to the exemption, in this particular file.

We know that the Government of the United States has been petitioned by the United States lumber industry. The United States government has not yet accepted the complaint. The complaint would impose both countervails and anti-dumping on the Canadian lumber industry. From the earlier review of the documents, it would appear that the Atlantic provinces have been exempted from the countervails in the petitions that have gone forward in the United States. However, they have not been exempted from the anti-dumping that might result.

Honourable senators, we must continue to allow the minister to negotiate this matter as best he can to ensure a free trade agreement from coast to coast. I understand that Minister Pettigrew will make a further effort this week to meet with his counterpart, when he is in Buenos Aires, and discuss putting in place a special envoy in respect of this issue.

**Senator Buchanan:** Honourable senators, I am rather pleased with the response from the minister. I would expect no less from the minister in that she is a Maritimer. Although she does represent Western Canada, the honourable minister has an excellent grasp of the situation, and there is no question about that.

All senators should recognize and understand that the minister said, "We have been free traders for in excess of 100 years," primarily in the lumber industry. There has been no argument from the United States. In fact, back in the 1980s, the New England governors recognized immediately that the Atlantic provinces should have an exemption because we had been free traders and we were continuing to be free traders. I am confident that the minister will impress upon Mr. Pettigrew the importance of continuing the exemption for Atlantic Canada.

**Senator Carstairs:** I thank the honourable senator for his comments. Indeed, I was back home, if you will, in Nova Scotia and also in Prince Edward Island over the weekend. The issue was addressed to me on several occasions, and so I heard it from the honourable senator's constituents, to some degree, while I was in my beloved Atlantic region of this country. I can assure him and his constituents that I will continue to plead the case for Atlantic Canada, because it is a just case.

**Hon. Gerald J. Comeau:** Honourable senators, I should like to continue with the same questioning as that posed by Senator Buchanan. I was glad to note that the subject of free trade had, in fact, been raised. The Maritimes have had to rely on free trade since Confederation, not only in lumber, but in fish and other products as well.

Honourable senators, I have a question about the Maritime accord, which had exempted Atlantic Canada from the kinds of actions that have been taken by the Americans. I do not wish to suggest in any way that the other provinces are somehow engaged in any kind of subsidy. However, there has been a dispute for many years between the Americans and the Canadians on the subject of stumpage fees and subsidies. Atlantic Canadians are being included in that discussion, even though the Americans recognize that Atlantic Canadians are not involved in any way. We ask, as Atlantic Canadians, that we return to the Maritime Accord and remain exempt from the war that seems to be between the Western provinces and the U.S.

• (1430)

**Senator Carstairs:** I thank the honourable senator for his question. Since he made reference to fish, I will begin by saying that it is wonderful, for those of us who come originally from Atlantic Canada and those of you who are lucky enough to live there still, that the exports of fish and seafood products reached a record high of \$4.1 billion in the year 2000. That is yet another example of the fact that Atlantic Canadians are doing things the right way.



In terms of the honourable senator's specific question in respect to softwood lumber, the softwood lumber issue is one on which, four times now, we have used the dispute settlement mechanisms established first in the Free Trade Agreement and latterly in NAFTA. We have won every single time, yet we are constantly bombarded by some interests south of the border — not all, but some — who say that we are engaging in unfair trade practices. It is very clear that we must say in the loudest possible terms that no matter where it is practised in Canada, we are not engaging in unfair trade practices in the lumber industry.

**Hon. Senators:** Hear, hear!

**Senator Comeau:** I understand the government's strategy at this point is either we hang together or we hang separately, because that is a Canadian way of approaching problems. I would suggest that Minister Pettigrew might want to meet with Atlantic premiers to discuss this question of having a coast-to-coast position on this matter, judging from some of the comments those premiers have made in recent days. I would ask the minister to pass that thought on to Minister Pettigrew.

**Senator Carstairs:** I thank the honourable senator. I understand that Minister Pettigrew has been in touch with the interests, both government and lumber, within the Atlantic region, but I will certainly encourage him to increase those contacts, if the honourable senator thinks that is necessary.

**Hon. Brenda M. Robertson:** Honourable senators, we do not want to pit one part of Canada against another. However, I wish Minister Pettigrew would stop saying that all premiers agree with his position, as was enunciated a few times this weekend. At that same time, we are reading comments in the press from the premiers of the Maritimes indicating that they have been quite upset about the whole situation and are asking for some recognition of their historic past in this regard. I do not know why the minister is all-inclusive in his statements when it is not true.

**Senator Carstairs:** Honourable senators, I must say that I have not seen any reports of the minister having made comments which would impact specifically on individual premiers. I have heard him say that the industry officials are hanging tough together, if you will. If he has made such comments, then I will bring to his attention that he does not have universal support.

**Hon. Jack Austin:** Honourable senators, there is some tone in this discussion that is disturbing me. We have an agreement under the World Trade Organization with respect to our entitlement to trade treatment. We have an agreement with the United States under NAFTA with respect to our entitlement to trade treatment. These are agreements with the Government of Canada, whose job is to reconcile Canadian interests and put them forward in the best shape and nature that it can. This happens not only with respect to lumber but also with respect to a wide variety of products, and it is in the nature of the federation of Canada that parts of Canada are represented as a collective interest.

I do not deny for a minute that the Maritime provinces have had special treatment, and I have no quarrel with it, but that is the

decision of the United States. Canada has one trade policy with respect to softwood lumber, and it is up to the United States to comply with its undertakings and its agreements. I hope we are not hearing anything in this chamber that runs to any other position.

Minister Pettigrew has said that we have a "rules-based system and we are using it." That is Canada's entitlement, and I trust that Senator Carstairs is not, in her answers that are pleasantries to the Atlantic provinces, in any way moving away from Minister Pettigrew's position.

**Senator Carstairs:** Honourable senators, I thank the honourable senator for his question. I think I made it clear that the position of the federal government is that of a Free Trade Agreement from coast to coast and that that Free Trade Agreement is enforceable. Each time we have tried to enforce it, we have won, in relation to the manner in which the Americans would treat softwood lumber — no matter where it comes from in Canada, but particularly that from the Province of British Columbia. The Americans consistently argue that there is something wrong with the system practised in the Province of British Columbia. That is not the position of the minister. That is not the position of the government. The position of the government is that we have traded fairly with the United States. We will continue to trade fairly with the United States, and we expect them to abide by the agreements that they have signed.

**Senator Austin:** In that case, on what basis would we ask for exemption for the Maritime provinces?

**Senator Carstairs:** An exemption has, in fact, existed respecting the Maritimes since the 1980s, but is no longer in effect. In the 1980s, because of pressures from the United States, we did enter into a softwood lumber agreement, and at that time we exempted the Maritimes from that particular agreement. Instead, the Maritime provinces operated under what was then known as the Maritime Lumber Accord.

**Senator Austin:** The Americans exempted the Maritime provinces, and one of their reasons for so doing was to create the distinctions which would found the arguments that they are now making against the western forest industries. I hope the minister will take that into account.

**Senator Buchanan:** Honourable senators, I do not want to get into an argument or discussion with my dear friend from British Columbia, but the comment that the Atlantic provinces have had special treatment is totally incorrect. We fought this battle back in the 1980s. It does not constitute special treatment for the Atlantic provinces. It is the right kind of exemption for the Atlantic provinces because we do not have stumpage subsidies, as they may have in other areas. I am not saying they do; I am simply saying they may have. That was recognized back in the 1980s when we signed the Maritime Lumber Accord and were exempted from the Softwood Lumber Agreement. That does not constitute special treatment for the Atlantic provinces. Therefore, the exemption should continue, not as special treatment but as the right kind of treatment, if you will, for the Atlantic provinces



I ask that question. Am I right or wrong?

**Senator Carstairs:** Honourable senators, I feel like Solomon's baby, being pulled in two parts at this particular moment.

I must indicate to the honourable senator that I do not think it has ever been proven that there are, in fact, stumpage subsidies anywhere in Canada, and that is why we have consistently won the cases whenever we have put our position forward in this regard.

The position of the government is very clear: The same position that I know is advocated by all members on the other side of the chamber, and that is that we have a Free Trade Agreement, we have the NAFTA, we have WTO agreements, and they should be respected.

**Hon. Gerry St. Germain:** Honourable senators, my question is to the Leader of the Government in the Senate as well, and it pertains to the Softwood Lumber Agreement. I think Senator Fitzpatrick succinctly described the position. I urge senators to watch what we say here. Anything that is said here will be taken down and utilized against us in the negotiations.

• (1440)

All honourable senators should practice extreme caution in what they say during these delicate times, because the ongoing negotiations are critical to all of Canada. This agreement is a Canadian agreement, not an eastern agreement or a British Columbia agreement.

UNITED STATES—RENEWAL OF SOFTWOOD  
LUMBER AGREEMENT—EXPORT OF LOGS

**Hon. Gerry St. Germain:** Honourable senators, my question relates to the fact that there has been a free flow of logs back and forth across the border. Logs are one of the contentious issues on which we are asking for free trade, yet there is a question of restrictions. Does the Leader of the Government in the Senate have a response on this particular issue?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for his question. I agree with Senator St. Germain in the first instance; we must all be cautious. We are in delicate times with respect to the United States and these negotiations and, just as their words can be used against them, our words can be used against us. I thank the honourable senator for that cautionary note.

As far as his specific question about the free flow of logs, I do not have an answer but I will try to get one for the honourable senator.

UNITED STATES—RENEWAL  
OF SOFTWOOD LUMBER AGREEMENT

**Hon. Ross Fitzpatrick:** Honourable senators, my question is for the Leader of the Government in the Senate.

Is it not true that as of March 31 the Softwood Lumber Agreement expired, that we are now in a period during which no agreement is in place, that the U.S. coalition has filed a petition upon which the U.S. government has not acted, and that during this period of time, and subsequently, the Government of Canada will be representing the industry from coast to coast in Canada?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, how nice to be able to answer, yes.

## PRIME MINISTER'S OFFICE

DUTIES OF MR. DAVID MILLER AS SENIOR ADVISER—  
POSSIBLE CONFLICT OF INTEREST

**Hon. J. Michael Forrestall:** Honourable senators, my question is for the Leader of the Government in the Senate. Will Mr. David Miller — about whom the leader and I have had some discussion in recent days — be absenting himself from all discussions with respect to the Maritime Helicopter Project?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for his question, and I am delighted that I do in fact have some answers for the honourable senator this afternoon with respect to Mr. Miller.

Mr. Miller, as you know, began duties with the Prime Minister's Office yesterday. He, like all other staff in the Prime Minister's Office, is governed by a conflict of interest code. Mr. Miller will fully respect that code, which requires him to meet all the requirements of conflict of interest, as well as the post-employment code. He has already met with officials of the office of the Ethics Counsellor, and as of yesterday, the Lobbyists Registration Branch, of course, reflects that Mr. Miller has terminated his relationship.

**Senator Forrestall:** Honourable senators, Mr. Miller may have terminated his relationship, but that association continues and the conflict, as the honourable leader is well aware, can work in two directions. I gather that the minister has no answer, then, to the direct question of whether or not Mr. Miller will be absenting himself from any discussions with respect to the ship-borne helicopter replacement program.

The Leader of the Government in the Senate has mentioned the conflict of interest code. I would ask that she take all honourable senators into the most recent confidence concerning employees of the Prime Minister's Office and table that document containing the conflict of interest code.

**Senator Carstairs:** Honourable senators, I thank the honourable senator for his question. I do not know if the conflict of interest guidelines are a public document. If they are I will make it available to the honourable senator.

Honourable senators, I do think that we must be careful. We talked several minutes ago about being careful with our words. David Miller is a man of integrity. I have known David for 20 years. I have no reason to question his integrity to any degree whatsoever. If Mr. Miller has signed a conflict of interest code, I believe that Senator Forrestall can rest assured that he will respect it.

[Translation]

## TREASURY BOARD

### REFORM OF THE PUBLIC SERVICE— INVOLVEMENT OF PARLIAMENT

**Hon. Jean-Robert Gauthier:** Honourable senators, my question is for the Leader of the Government in the Senate. In a press release which I have just received, the Prime Minister announces that he has set up a task force on modernizing human resources management in the public service. The Prime Minister has also appointed Ranald A. Quail, now Deputy Minister of Public Works and Government Services Canada, as Senior Advisor to the Privy Council Office to head the task force.

Further on, we read that Mr. Quail will have access to an advisory group that will comprise expertise from the private, public and academic sectors. Will MPs and senators be involved in this search for a solution to the modern problems facing our public service?

[English]

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for his question. I cannot give him a specific reference to the fact that parliamentarians will be involved. They will certainly be involved in any debate or discussion on any legislative changes that would take place as a result of the review.

I would hope that the individual who has been asked to head the task force, Ranald Quail, will use all potential resources, and certainly part of those resources are members of Parliament and members of this institution.

[Translation]

**Senator Gauthier:** Honourable senators, a number of studies have been done since 1979, but none of them have involved the government and none have effectively addressed the problem of managing public servants.

Are MPs and senators not capable of giving their point of view or advice in this review of human resources management? We did so for the Public Service Staff Relations Act. Why, in 2001, could we not review this and other pieces of legislation, such as

the Public Service Employment Act, and the financial institutions legislation? We count in this process.

[English]

**Senator Carstairs:** Honourable senators, the task force is being set up to support the Honourable Lucienne Robillard in her capacity as minister responsible for human resources management reform. She is a member of Parliament. She is also a member of cabinet and a member of the same caucus to which Senator Gauthier belongs. I would think that she would welcome the intervention of members of Parliament and senators from all political parties so that she can make human resources management reform a fundamental reform issue for the year 2001.

## HEALTH

### POSSIBILITY OF STUDY ON NATIONAL PROGRAM—INVOLVEMENT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, there are media reports that the government is about to launch a health study, possibly led by former Premier Romanow of Saskatchewan. Will the minister confirm those reports?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, like the honourable senator, I have read the same media stories, but I cannot confirm them.

**Senator Kinsella:** Perhaps then, honourable senators, we are in time.

The Standing Senate Committee on Social Affairs, Science and Technology, under the able leadership of Senator Kirby and Senator LeBreton, have had that very topic under study, and considerable financial and human resources have been invested by honourable senators in this chamber.

• (1450)

Would it not make sense for the government to call upon the Senate committee to continue with its work? Why is the government even considering establishing an alternative committee?

**Senator Carstairs:** Honourable senators, when I learned of that possibility, in the same way as Senator Kinsella did, through media sources, I immediately advised my colleague Minister Rock, who is back on his feet and functioning, that the work of the Senate committee was first-class and that the tabling of their first report last week was greeted with great public interest.

Regardless of how the government decides to proceed, I hope that the Senate committee will be encouraged to continue its excellent work.



**Senator Kinsella:** Honourable senators, are we dealing with a turf war between the Minister of Health and the Chairman of the Standing Senate Committee on Social Affairs, Science and Technology? This committee is already well along in its work. As the minister has indicated, its interim report has been tabled in the house. Why would the Minister of Health be considering establishing another committee? That seems to me to be redundant, at the least, and to be tautologous, politically.

**Senator Carstairs:** Honourable senators, I can confirm that there is no turf war going on between the Senate committee and the Minister of Health. To reiterate what I said, I wanted the Minister of Health to know very clearly of the excellent work that had been done by the Standing Senate Committee on Social Affairs, Science and Technology and of the desire of senators to continue with that process. I wanted that to be carefully considered before any final decision was made on any announcement that might be forthcoming.

**The Hon. the Speaker pro tempore:** Honourable senators, the 30 minutes allotted for Question Period have expired. I have one more senator on my list. Do I have leave to recognize that senator?

**Hon. Senators:** Agreed.

## CITIZENSHIP AND IMMIGRATION

### ENTRY OF ACTIVISTS DURING SUMMIT OF THE AMERICAS

**Hon. Mira Spivak:** Honourable senators, my question is directed to the Leader of the Government in the Senate and has to do with José Bové, who was invited by the Council of Canadians to speak at a teach-in at the People's Summit in Quebec.

Immigration officials say that Mr. Bové requires a special ministerial permit to enter Canada due to his recent conviction in France for vandalizing McDonald's — in my opinion not an unmitigated evil. He was sentenced to three months in jail, but the case is under appeal.

Does the minister know what the government's position is on this matter? It has been reported that some activists are on a list of people being prevented from entering Canada simply because they are activists.

What is the mandate under the Immigration Act, or any other act, for refusing permission for these people to enter Canada?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I can outline the process that any individual would follow. The Canada Customs and Revenue Agency has primary responsibility for protecting our borders. When authorities at the border, be they Customs officials or Immigration officials, believe that additional scrutiny is required, they undertake that scrutiny. Those who are genuine visitors are allowed into the country. However, let us not misunderstand. CIC is mandated to protect the health and safety of Canadian society by preventing entry of those who pose a danger to the public, or

who are likely to engage in criminal activity in Canada. If that is the determination made by the individuals who process the entry of visitors to Canada through our border points, those people will indeed be denied entry to Canada.

**Senator Spivak:** Honourable senators, the minister is therefore confirming that there is a list at customs of people who are activists and will probably not be allowed to come into the country.

## SOLICITOR GENERAL

### SUMMIT OF THE AMERICAS—RULES OF ENGAGEMENT FOR POLICE FORCES—USE OF PLASTIC BULLETS

**Hon. Mira Spivak:** Further in regard to the summit, honourable senators may have seen the article in *The Toronto Star* about plastic bullets. Plastic bullets have been approved for use by the RCMP and a very substantial order for them has been placed. Plastic bullets are considered to be less lethal with less potential for causing death than conventional police weapons. They are designed to crack ribs and cause people pain.

What are the rules of engagement? Can the RCMP and the Sûreté du Québec determine the tactics that will be used? You can well imagine that it is very possible that innocent, peaceful protesters will be injured. In Vancouver, someone was injured very badly by this sort of weapon.

Is this within the realm of the legislative purview of the Government of Canada, or is it beyond? What sort of direction can the government issue to the RCMP and the Sûreté du Québec, or is the government prevented from giving direction? The police forces have placed a substantial order for this equipment for use in Quebec City.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, to reply to the honourable senator's opening statement about the existence of a list of activists, to my knowledge there is no such list. Each individual crossing the border will be examined in exactly the same way as anyone crossing the border is examined. However, a judgment call may well be made that a certain person poses a danger to the security of Canadians. If, in the judgment of the person doing the investigation, an individual does pose a danger, that individual will not be allowed into the country.

With respect to the use of plastic bullets, the RCMP has confirmed that they will have a whole range of equipment, including plastic bullets which, as the senator has indicated, have the potential to be less lethal than regular bullets, which is a good thing.

Let us be clear on the government's position: Canadians, and even visitors to the country, have a right to protest peacefully. If the demonstrations are peaceful, there will be no need for any of our police authorities to use any of the weapons at their disposal. Those weapons, be they night sticks, shields or plastic bullets, will only be used if violence erupts.



## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have three delayed answers. The first is in response to the question of Senator Forrestall, raised on March 20, 2001, regarding the Solicitor General, allocation of dedicated radio band for police forces; the second is in response to a question raised by Senator Comeau on March 22, 2001, regarding Fisheries and Oceans, East Coast, proposal to split fishing zones into native and non-native areas; and the third is in response to a question raised by Senator Andreychuk on March 22, 2001, regarding Zimbabwe.

### SOLICITOR GENERAL

#### ALLOCATION OF DEDICATED RADIO BAND FOR POLICE FORCES

*(Response to question raised by Hon. J. Michael Forrestall on March 20, 2001)*

The RCMP, along with other police agencies across Canada, participates in numerous fora with Industry Canada, to promote and protect public safety interests related to radio frequencies.

There are ongoing discussions to dedicate radio frequency bands to allow for the development of communications infrastructures for use by police services across the country.

In fact, this is an issue under review, not just in Canada but internationally as well. There is an ongoing initiative consisting of an international survey to evaluate the needs for world-wide common radio spectrum for public protection and disaster relief.

Let me assure the honourable senator that, in conjunction with other government departments and international counterparts, the RCMP is actively examining all of the aspects concerning this issue with a view to supporting and enhancing the public safety interests of all Canadians.

### FISHERIES AND OCEANS

#### EAST COAST—PROPOSAL TO SPLIT FISHING ZONES INTO NATIVE AND NON-NATIVE AREAS

*(Response to question raised by Hon. Gerald J. Comeau on March 22, 2001)*

Senator Gerald Comeau has raised a question regarding splitting fishing zones into native and non-native zones.

The federal government has not proposed, nor is DFO discussing separate fishing zones for native and non-native fishers. This was stated clearly by DFO Parliamentary

Secretary, Lawrence O'Brien, noting that the "proposal to split the zones is definitely not the policy of DFO."

DFO has always advocated that it is important for Aboriginal and non-Aboriginal fishers to work together. They live and work in the same communities and should coexist within the commercial fishery.

Senator Comeau also raised concerns about the involvement of non-Native fishers in the negotiation process. Mr. Gilles Theriault was appointed Associate Federal Fisheries Negotiator specifically for the purpose of consulting with industry and others to ensure their interests are reflected in fisheries negotiations, under Mr. James MacKenzie.

DFO's primary objectives for the Atlantic fishery remain conservation, practical fishing arrangements with First Nations and an orderly fishery for all participants.

On February 9, the Government of Canada announced a two-track strategy to respond to the *Marshall* decision. Negotiations will continue with Mi'kmaq and Malisee communities in Atlantic Canada to conclude one to three year fishing agreements within the DFO process. Treaty and Aboriginal rights will be part of the longer-term process under DIAND.

### FOREIGN AFFAIRS

#### ZIMBABWE—HUMAN RIGHTS VIOLATIONS— WELCOMING OF PRESIDENT BY FRANCE AND BELGIUM

*(Response to question raised by Hon. A. Raynell Andreychuk on March 22, 2001)*

— Canada's position on the worrisome situation in Zimbabwe is well known.

— The Minister for Foreign Affairs and the Secretary of State for Latin America and Africa issued a statement on Canada's concerns with Zimbabwe's current situation on March 15, 2001.

— The Canadian Government is concerned about the recent events that took place in Zimbabwe and especially what we perceive as very negative trends in the country including both judicial issues and political violence.

— The 1991 Harare declaration pledged the Commonwealth and its countries to work with continuous vigour to protect and to promote fundamental political values, including democracy, the rule of law and the independence of the judiciary.

— Canada has called upon the Zimbabwean government to respect the rule of law and to ensure that the rights of a Zimbabwean citizens are fully protected.

– Canada is working through the Commonwealth Ministerial Action Group (CMAG) to bring international attention to bear on the problems of governance in Zimbabwe.

– In this way we will bring the concerted pressure of the international community on the Zimbabwe Government to respect the principles of the Harare declaration.

Indeed, the Minister for Foreign Affairs attended a meeting in London of the Commonwealth Ministerial Action Group on 19/20 March, and supported the decision of that Group to arrange a Ministerial Mission to Zimbabwe, to highlight the situation there and to bring international pressure on The Zimbabwe Government.

made in the resolutions on the distinct character of Quebec society adopted by both Houses of Parliament in December 1995.

[Translation]

Everyone remembers when, in December 1995, Prime Minister Jean Chrétien had a resolution passed to recognize the distinct character of Quebec society.

[English]

These resolutions, and the Calgary declaration, recognize that Quebec is distinct because, among other things, of its civil law tradition.

[Translation]

The amendments proposed by Bill S-4 to laws that refer to civil law concepts coming under provincial jurisdiction have become necessary because of the major changes made to civil law notions, concepts and institutions, with the implementation of the new Quebec Civil Code, on January 1, 1994. These are the first amendments to the 350 federal acts that were identified as using Quebec's civil law as a backup and that will undergo an harmonization process in the years to come.

[English]

Prior to the introduction of Bill S-4, extensive consultations were conducted with the Quebec Department of Justice, the Canadian Bar Association, Quebec Division, le Barreau du Québec, la Chambre des notaires du Québec and various academics and practitioners were consulted. Their input has contributed to the excellence and innovation in bijural drafting which has been recognized in Bill S-4.

Committee consideration of Bill S-4 has been considerable. During the course of discussions, all had the opportunity to air their views. There was a high level of discussion. Some of the issues canvassed include the following items. The first was the need for and the essence of the harmonization program. The second was the quality of the drafting techniques used. The third dealt with recommendations on how to make federal legislation more user-friendly and more readable for the average Canadian. The fourth was a clarification of the difference between harmonization and uniformization. The fifth is the inclusion of a preamble which is a factual yet symbolic message that also discusses the appropriateness of the use of the expression "Quebec society." Sixth, there are replacement provisions relating to marriage which better reflect the new reality of the Civil Code of Quebec. Finally, there is the inclusion in the Interpretation Act provisions which would, for the first time in a statute, expressly provide for the statutory recognition of Canadian bijuralism and of the complementarity of federal and provincial law in matters relating to property and civil rights; as well as setting out the rules to facilitate the interpretation of federal statutes using common law and civil law terminology.

[Translation]

• (1500)

## ORDERS OF THE DAY

### FEDERAL LAW-CIVIL LAW HARMONIZATION BILL

#### THIRD READING—DEBATE ADJOURNED

**Hon. Pierre De Bané** moved the third reading of Bill S-4, to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law.

He said: Honourable senators, Bill S-4 is the first of a series of bills that will be drafted under the federal government's program to harmonize federal law with the civil law of the Province of Quebec.

The purpose of the program is to ensure that each linguistic version of federal law takes into account the civil law and the common law traditions.

[English]

The process which led to the introduction of Bill S-4 is rooted in the Policy for Applying the Civil Code of Quebec to Federal Government Activities, 1993, and the Policy on Legislative Bijuralism, 1995, both of which were developed and implemented by the federal Department of Justice.

Bill S-4 represents an innovative approach to legislative drafting. Canada is in the unique position of having two legal traditions and two official languages. Recognizing these realities is the challenge that Bill S-4 addresses. Bill S-4 also forms part of a series of actions designed to implement the commitments



[Translation]

In short, the witnesses heard by the committee were unanimous in their praise for the aim of the harmonization program and the innovative drafting techniques used. The discussion on the addition of rules of interpretation inspired the suggestion that the bill summary include an explanation on linguistic order in legislation drafting.

This suggestion was accepted, and the explanation will be included when the bill is reprinted. The amendments proposed by Bill S-4 testify to a concern to appeal to Canada's four legal audiences: anglophones and francophones in civil law and anglophones and francophones in common law, because in New Brunswick common law may be practised in French.

[English]

Bijuralism and bilingualism are a fact of life in Canada. The harmonization of federal legislation will, as a result of Bill S-4 and other bills that will follow over the next few years, make our legislation more respectful of both our legal traditions. It will also make our legislation more understandable to all Canadians by using the proper concepts and terminology familiar to Canadians, no matter in which province they live, and whether the civil law or the common law system governs their everyday lives. This will have the bonus effect of reducing uncertainty relating to the application and interpretation of our laws and thereby ensure equal access to justice by all Canadians.

Canada is a bijural country where both civil law and common law coexist. This is what makes us different from our neighbours to the south. It is a clear reflection of the principles on which our country was founded and which continue to guide us, namely, although we jealously protect our individual heritage, we have also learned that by providing mutual recognition and respect we can create a unique Canadian flavour which is the envy of many countries around the world.

[Translation]

Honourable senators, I invite you to support Bill S-4 at third reading in order to start the process of parliamentary approval needed at this first stage of harmonizing federal statutes with the civil law of the Province of Quebec.

[English]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, will the Honourable Senator De Bané answer a question?

**Senator De Bané:** Of course, honourable senators.

**Senator Kinsella:** Honourable senators, the first preambular paragraph of the bill states:

WHEREAS all Canadians are entitled to access to federal legislation...

I do not know what the phrase "to have access to federal legislation" means.

[Translation]

• (1510)

What is the meaning in the French version of:

...avoir accès à une législation fédérale...

[English]

The grammar makes no sense to me. Perhaps the honourable senator could explain it. I do not know whether committee members looked at that paragraph, and I do know if their attention was drawn to another paragraph. I simply do not know what that English phrase means.

[Translation]

I am not certain that the French version of this sentence is more logical.

[English]

I do not understand what it means.

**Senator De Bané:** Honourable senators, the drafters pursuing many objectives. One of them, as I said in my speech — and the issue was canvassed among the different experts — was how to make federal legislation more user friendly and more readable for the average Canadian who has not spent years studying law. The idea is to draft legislation that will be enriched by both the common law and the civil law, and bring some harmony to the drafting process.

**Senator Kinsella:** I do not know how one would parse that sentence. Let me try to come at it another way.

I understand from the honourable senator's answer that the intent is to make it easier for the average Canadian to understand what the laws of Canada provide, but I find this phrase difficult to understand. I understand the word "access," but I do not understand what the word "legislation" means, as it is written in the preamble. How is there an access to legislation?

**Senator De Bané:** The remarks of the Deputy Leader of the Opposition are very well put. I trust that the drafters of the next group of laws that must be harmonized — because over 300 laws are to be harmonized — will take into consideration what he has said.

My understanding is that the goal is to make laws more user friendly, but I understand that, taken literally, the phrase "access to legislation" can be drafted in a more precise way than by using those terms.



**Hon. Jeremiah S. Grafstein:** Honourable senators, Senator De Bané can appreciate that the preamble does have an impact in the sense that, while one would not disagree at all with the marvellous draftsmanship of the bill itself or at least the legislatively enforceable part, the preamble is there for a particular purpose. Obviously, if it raises some questions, my honourable friend will understand that it is important that we have some understanding.

In support of this preamble, the honourable senator mentioned that a resolution of this place talked about distinctive society; yet I do not see any reference to the words "distinctive society" in the preamble. Is that correct?

**Senator De Bané:** The idea is there in that it, essentially, refers to what was adopted by both Houses in 1995. The concept referred to in the preamble is the one we adopted about six years ago.

**Senator Grafstein:** Let me turn the attention of honourable senators to the second recital, where it talks about the Civil Code of Quebec. The words "reflects the unique character of Quebec society" are used. Could the honourable senator enlighten the Senate as to what the word "unique" means in this context?

**Senator De Bané:** The beauty of our federal system, honourable senators, is that it allows each province to develop according to its own unique character. There is no doubt that the Fathers of Confederation have given Quebec some unique characteristics, one of them being the Civil Code and another being bilingualism. That does not in any way suggest that other provinces are not unique as well. I see nothing objectionable there. The word "unique" was also used by the premiers in the Calgary declaration.

**Senator Grafstein:** The description in the bill uses variations of the word "harmony." The Oxford Dictionary defines "harmony" as a "Combination or adaption of parts, elements, or related things, so as to form a consistent and orderly whole; agreement, accord, congruity."

Honourable senators, I have no objection at all to the object of the bill. It is very clear that the purpose of the bill is to harmonize the federal law.

When we turn to the second recital, the Oxford Dictionary defines the word "unique" as "...the only one of a kind; having no like or equal; unparalleled..." It does not use the word "equal."

Again, I think the object of the legislation is brilliantly drafted, incorporating bijural concepts with the notion of Quebec having a unique character that is unparalleled, unequalled and one of a kind. However, is there not a logical inconsistency between the two terms based on narrow definitions?

**Senator De Bané:** Honourable senators, I respectfully submit to my honourable friend that he must read the whole paragraph to understand in what context the word "unique" is used. The paragraph reads as follows:

Whereas the civil law tradition of the Province of Quebec, which finds its principle expression in the *Civil Code of Quebec*, reflects the unique character of Quebec society...

• (1520)

It so happens that it is the only province that uses the civil code. By referring to that unique character of Quebec — that is, that it has a civil code — is something that I find to be neither repugnant nor in any way incompatible with what we are trying to achieve.

Honourable senators, on this point I wish to refer to Senator Beaudoin, whose knowledge of law is not disputed. He brought a twist to the meaning of the word "harmonization" — that is, putting both the common law and civil law together to make one hybrid system — when he said: "No. That is not what we are trying to achieve here. What we are trying to achieve is that the federal legal system is respectful of both systems. That is it." I see my colleague nodding that this is the interpretation and not the one that my learned friend is extracting from *The Canadian Oxford Dictionary*.

**Senator Grafstein:** Honourable senators, my final question is this: My honourable friend is proposing this bill for third reading. Is he satisfied, as I am, that a preamble is not necessary, in the sense that the bill itself would go forward without the preamble and the effectiveness of the bill would not, in any way, shape or form, be diminished or challenged or changed? In other words, preamble is not *a fortiori* necessary to this particular bill but is quite unusual?

**Senator De Bané:** It all depends on where we sit. If we deleted that preamble today, it would be an unwise thing to do.

Honourable senators, having been a member of Parliament for over 32 years, I have seen a change of mentality in the Province of Quebec over that period. Today, federalists in Quebec — and I am referring only to them in this debate — do look upon themselves as a Quebec society. That did not exist 33 years ago when I was elected to Parliament. Today, however, I encounter on a daily basis fellow compatriots from Quebec who are federalists, like you and me, who consider themselves to belong to Quebec society. That does not create any negative reaction in me. I know that, at the end of the day, they are proud of being Canadian and living in a country that allows them to fulfil all their potentialities and maintain their distinctive character. The more we are generous with them and the more we encourage them to build a society within Canada, the more we are doing the right thing. That is my opinion.

**Senator Grafstein:** Honourable senators, I have one final comment. I do not want to put any adjectives to my position about one definition being abhorrent or not. That is not the purpose of my question. My purpose is with respect to clarity of interpretation, so that when you put a piece of legislation of the importance of this one before this chamber, it is absolutely imperative that the senators who are proposing this legislation ensure that the preamble, if there is one, is so precise that there is no question in anyone's mind as to what it means. Otherwise, we give judges a fishing trip to decide a dispute that legislators may not provide.

I want to thank the honourable senator for his response. I am not calling these terms abhorrent. They are not abhorrent, but I disagree with them because of their lack of clarity. We are talking about legislation that is to be clear, and if two or three senators come to a different conclusion here as to what a word means in a preamble of this important bill, that raises serious questions about the clarity of the bill itself.

**Senator De Bané:** Honourable senators, frankly, at the end of the day, what is objectionable about saying that the Civil Code of Quebec reflects the unique character of Quebec society? I see nothing in that statement that, in my opinion, should bring honourable senators to have any reservation about it.

I think this is something that is, as we say about the American Constitution, self-evident.

[Translation]

**Hon. Serge Joyal:** Honourable senators, I should like to go back to the remarks of the Honourable Senator De Bané.

[English]

**Senator Kinsella:** Point of order! Pursuant to rule 33(2), I move that Senator Beaudoin do now be heard.

[Translation]

**Hon. Gérard-A. Beaudoin:** Honourable senators, Bill S-4 is intended to harmonize federal law with the civil law of Quebec.

[English]

**An Hon. Senator:** Order!

**The Hon. the Speaker *pro tempore*:** This is a motion. There is a motion on the floor. Do you agree, honourable senators, that I recognize the Honourable Senator Beaudoin, whom I did not see standing up — if he did?

**Senator De Bané:** He was standing up.

**The Hon. the Speaker *pro tempore*:** He is the speaker, then.

**Senator Kinsella:** We go back and forth, do we not?

**The Hon. the Speaker *pro tempore*:** That is the motion that I put on the floor. Is it agreed, honourable senators, that I recognize Senator Beaudoin?

**Some Hon. Senators:** Agreed.

**Senator Kinsella:** Is he asking a question of Senator De Bané or is he making a speech?

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, it is normal that we go back and forth from one side to the other in debate. If I understood correctly, Senator Joyal wished to put a question to Senator De Bané on the speech he had just made.

Senator Kinsella may perhaps have thought that Senator Joyal was rising to address the Senate and make a speech, but I do not think that is the case.

**The Hon. the Speaker *pro tempore*:** Senator Joyal, you had a question?

[English]

**Senator Joyal:** Honourable senators, I should like to ask a question.

**The Hon. the Speaker *pro tempore*:** I must continue with the motion. Shall I recognize Senator Beaudoin?

**Senator Kinsella:** I withdraw my motion. I was of the understanding that Senator Joyal intended to debate, and we wanted to maintain the practice of going back and forth. However, Senator Joyal is asking a further question of Senator De Bané, which is very much in order. I apologize for my misunderstanding.

**The Hon. the Speaker *pro tempore*:** Senator Kinsella is withdrawing his motion. Is leave granted?

**Hon. Senators:** Agreed.

[Translation]

**Senator Joyal:** Honourable senators, I wish to ask Senator De Bané whether it would not be more appropriate when the unique character of Quebec society is mentioned in the bill, as it is in the second whereas, to refer to the overall context from which this reference is taken.

Senator De Bané himself said that it was taken from the Calgary Declaration. However, the Calgary Declaration does not talk about the unique character of Quebec in a vacuum.

I will read paragraph 4:



[English]

The Calgary Declaration does not talk about Quebec society in a vacuum. It talks about Quebec society in reference to — and I read paragraph 4 of the Calgary Declaration, which states:

[Translation]

Canada's gift of diversity includes Aboriginal peoples and cultures, the vitality of the English and French languages and a multicultural citizenry drawn from all parts of the world.

When one speaks of Quebec society and refers to only one aspect of the Calgary Declaration, I do not think one does justice to the declaration. Quebec society is not a monolithic French-speaking society. It is a diversified society, the various components of which have particular rights.

• (1530)

If one wanted to refer to the text of the Calgary Declaration, Quebec society should have been described by making reference to its diversity, to clearly show the reality in which that Quebec is evolving.

Could Senator De Bané tell us how he reconciles this essential component of Quebec reality — all the other senators from Quebec could attest to that — of Quebec society? This is not a neutral concept, but a socio-political one that has given rise to debate and that will continue to do so.

How can the honourable senator assure us that this term is — as he said himself — of no consequence, in light of the other debates that are taking place to describe Quebec society?

**Senator De Bané:** Honourable senators, the text is very clear. It states that the Civil Code of Quebec reflects the unique character of Quebec society. That society was just described by Senator Joyal. I agree with him on its various components.

I submit that this multicultural society, which is made up of people of various origins, including the Aboriginal peoples who were its first members, with francophones accounting for over 82 per cent of its population, is a society with a unique character.

I do not see anything in this which should prevent any of us from subscribing to it. If Senator Joyal saw anything else in these words, such as, for example, the expression "unique character" as meaning "exclusively francophone society," he is absolutely right, but that is not the issue.

I do not think that by saying "unique character" we are denying the various components to which he alluded. In the Canadian context, it is clear that this province has a unique character by its demographic structure, its legal system and its internal structure. The 1867 Constitution even includes distinct provisions for Quebec, as does the 1982 Constitution.

Honourable senators, I do not see any political bent here but, rather, the recognition of a situation on which there is unanimity.

**Hon. Gérald-A. Beaudoin:** I repeat, the purpose of Bill S-4 is to harmonize federal law with the civil law of Quebec. This is the first time there has been such a bill. It is just a standard bill, and as such has no constitutional impact. However, it must be clearly understood: This bill is not intended to harmonize the two systems of private law in Canada, the civil law of Quebec and the common law of the other nine provinces. It does not touch the civil law and it does not touch the common law. What it does is harmonize the federal law with the civil law of Quebec.

There are seven parts to the preamble. I agree that the preamble has no normative impact, per se, nor any constitutional impact. It can, however, in a context of legislative interpretation, be used to explain the purpose and scope of a bill.

The "whereas" in the preamble referring to the unique character of Quebec society refers to the civil law tradition of Quebec. It reflects the particular situation of Quebec.

Reviewing the course of history, Quebec is in a particular situation, indeed a different legal situation from the other provinces. This dates back to the Quebec Act of 1774. At that time, we were a British entity. We were not independent and we came under British jurisdiction. In the United Kingdom's Parliament of Westminster, the Prime Minister, Lord North, had legislation passed which reintroduced French civil law in a British colony. This situation was formalized in constitutional law with sections 94 and 98 of the Constitution Act of 1867. This is fundamental. The British North America Act of 1867 repeated the same terms as the Quebec Act — property and civil rights.

Looking at Bill S-4, we see that the federal legislation is being harmonized with the provincial. In Quebec private law is in the Civil Code and in civil law. Federal legislation must be interpreted in that province, Quebec, in keeping with the spirit of civil law, just as in the other nine provinces federal legislation is harmonized with the spirit of the common law.

That is what Canadian federalism is all about. There is just one province with a civil code, the others have a common law system. This goes way back in history, at least two centuries. It was established in 1867 in the Constitution, and, let us not forget, the Civil Code of Lower Canada existed at the time of Confederation. It was bilingual.

The idea of federalism rests on diversity and the recognition of differences. It requires provincial differences be taken into account. Of course, all the provinces have the same powers: sections 92, 93, and so on of the Constitution Act, 1867. The Supreme Court said it and repeated it, but in terms of private law, history has determined that one province would have civil law and the others, common law.

• (1540)

The British Parliament itself accepted this character of our country.

I could cite Chief Justice Dickson in *Sheldon*:



[English]

It is necessary to bear in mind that differential application of federal law can be a legitimate means of forwarding the values of a federal system. In fact, in the context of the administration of the criminal law, differential application is constitutionally fostered by ss. 91(27) and 92(14) of the Constitution Act, 1867. The area of criminal law and its application is one in which the balancing of national interests and local concerns has been accomplished by a constitutional structure that both permits and encourages federal-provincial cooperation. A brief review of Canadian constitutional history clearly demonstrates that diversity in the criminal law, in terms of provincial application, has been recognized consistently as a means of furthering the values of federalism.

[Translation]

Bill S-4 harmonizes federal legislation with the spirit of civil law, as our federal laws are harmonized with the spirit of the principles of common law, which come to us from Great Britain.

I see nothing unconstitutional in this bill, quite the contrary. I support the preamble. This bill goes back in history, and a preamble for such an important piece of legislation is justified. This bill goes to the very heart of Canada's constitutional structure. The Civil Code has even outstripped the Constitution of Canada. However, I respect the opinion of those who do not want a preamble. I hope we will continue in this vein and introduce other similar bills.

**The Hon. the Speaker *pro tempore*:** Will the Honourable Senator Beaudoin agree to answer questions?

**Senator Beaudoin:** Of course.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** My question concerns the preamble. I refer to this expression, and I quote:

...que tous les Canadiens doivent avoir accès à une législation fédérale...

And in English:

[English]

"...Canadians are entitled to access to federal legislation..."

I find that a meaningless expression in English.

[Translation]

I am not sure I understand the expression "accès à la législation."

[English]

I understand the answer that Senator De Bané provided on the objective in the law, in which I share agreement. However, in

section 15 of the Charter it says that everyone is equal before and under the law, and has equal benefit of the law. That I understand, but to have equal access to legislation, the way that is written, my question Honourable Senator Beaudoin is: Would the drafting in section 15 of the Charter not be much better than the drafting that is in the preambular paragraph 1?

**Senator Beaudoin:** I very much like section 15 of our Charter. We are equal by the law, under the law, the benefit of the law and the application of the law. It is a masterpiece. I would prefer that wording in many other statutes.

I would prefer the term "benefit" to "access." Of course we have access to the laws of our country. Perhaps Chateaubriand, or a great author like Montesquieu, would have used another expression, but in the first paragraph it means that all Canadians are entitled to access to federal legislation. They may be entitled to benefit from the federal legislation, or have the benefit of federal legislation, as it is stated in section 15 of the Charter. I would have preferred that, but I do not think the Supreme Court of Canada will have a problem with the first "whereas." It is obvious that the purpose of this bill is to render the federal legislation of Canada in keeping with the common law and civil law traditions, and to harmonize the federal legislation of the Parliament of Canada with the genius of the private system in Quebec and all the other provinces.

It works very well. Do not forget that the Civil Code of Quebec is in both languages. It is a bilingual statute that came into existence one year before Confederation. When we updated the civil code in 1994 we did it in both languages, and we respected the spirit of a codified system that exists in Quebec.

How can we be against that? It is advantageous to Canada to have the two systems of law that are the most popular in all the world. There are at least 60 countries with the civil code, and at least 60 countries with the common law system. It is hard to beat that.

It is stated that the Supreme Court of Canada shall have three judges from Quebec, three civil jurists from Quebec, and, of course, that the court shall be perfectly bilingual, and it is. I do not see any difficulty with that.

[Translation]

We are fortunate to have two systems of law. It is a very good thing to harmonize federal laws with the civil law of Quebec and with principles of common law in the other provinces. I have only praise for those who drafted this bill.

It is true that a preamble is unnecessary. If one is drafting legislation in an area based on two centuries of our country's history, I would happily give in to the temptation to draft a preamble. If ever a preamble were justified, it would be in a bill such as this which, in spirit, goes back to the Quebec Act, 1774. In 1774, our ancestors made a choice, and they remained faithful to the British Crown. The British Crown reintroduced French law in the Canadian colony.

• (1550)

It must not be forgotten that we were a colony at the time. Reintroducing French law in a British common law colony is quite something. It is unique, no doubt about it!

**Senator Joyal:** Honourable senators, at the beginning of his speech, Senator Beaudoin said that Bill S-4 was not a constitutional bill. Strictly speaking, I agree with him. It is not a constitutional bill, because it does not, strictly speaking, amend the Canadian Constitution. The honourable senator concluded by saying that this bill was constitutional and went to the very heart of what Canada is all about. How does he reconcile these two statements?

If this law goes to the very heart of what Canada is all about, let us go to the very heart of Canada as it really is. The very heart of Canada as it really is is how it was described in the Constitution Act, 1867.

And the Constitution Act, 1867, neither in sections 92(12), 94 or 98 where it recognizes that the Province of Quebec has the right to maintain and develop a civil law tradition, does not have to recognize or include a socio-political concept that excludes, by its very definition, the groups that make up Quebec's society or identity as we understand it. These are, in my opinion, the two things that must not be confused.

I believe I understand what Senator Beaudoin has in mind when he says that it is not very important, that it is not a constitutional document. Then he adds that it has a constitutional scope and that it goes to the very heart of the country. If we go to the very heart of the country, let us describe things the way they are in the essence of the country, that is in the Canadian Constitution.

**Senator Beaudoin:** Honourable senators, I said that the act, from a strict legal point of view, is not an act that amends the Constitution. It is an organic and very important law. I never said that it was a constitutional act, but that it was an act that relates to the Constitution, that it goes back a long way in history.

The Civil Code is based on section 92(13). It is a civil law document and it does not amend the Constitution. In my opinion, civil law is a masterpiece. It was modernized in 1994 by the Quebec National Assembly, and Sir George Étienne Cartier had it passed by Upper and Lower Canada, in August 1866. This is an act that goes back a long way in the history of our country.

I maintain that, strictly speaking, this is not an act that amends the Constitution, but it is a very important act. It reflects the spirit of the private law in one province, just like common law reflects the spirit of the common law in the other provinces, and these are two marvellous systems.

In my opinion, the preamble does not change the nature of the act at all. Of course, it is not essential, but when an act harmonizes the federal laws of our country with one the greatest

law systems, it is certainly not a bad thing to conclude that a preamble is in order. It is not essential. In my opinion, however, they were right to include it.

I agree that there are not only francophones in Quebec, on the contrary. This is why we have a bilingual Civil Code. Let us not forget that. Quebec civil law has existed in both languages since 1866. Legislative bilingualism dates back to before the Canadian Confederation.

When we say that the Civil Code gives Quebec a unique character, since it is the only province with a codified system, in my opinion, we are only describing reality. We are only showing that there are two major private law systems in Canada.

The aspect of Quebec differs in that there is a Civil Code for private law, but this does not mean that no common law principles apply to Quebec. The private law system is truly unique to Canada.

The British Parliament, in 1774, reintroduced French law into Lower Canada, in order to keep our ancestors loyal to the British Crown. This is part of history. I do not know if there are any other such examples in British history, but there might be.

The reintroduction of French civil law in a British colony is certainly something unique. That is all that I am say, nothing more, nothing less. The bill does not change the civil law, does not change the common law; it pays homage to the two systems of law that are ours and are close to our hearts.

[English]

**Hon. Jeremiah S. Grafstein:** Honourable senators, I take it from listening to my learned colleague Senator Beaudoin that he agrees that it is an unusual practice to have a preamble in a bill of this nature that is not legally or strictly a constitutional bill.

**Senator Beaudoin:** Honourable senators, I said that we may have a preamble or we may have no preamble. Nothing is imperative. However, I have said very clearly that it is not an amendment to the Constitution of Canada — and obviously it is not because it would be unconstitutional — we must follow the Constitution and make an amendment to the Constitution. We have jurisdiction on this matter. If the House of Commons agrees with us, it will become law.

I say that this is not a bill on the Constitution, but it is a very important bill. As to whether it should have a preamble, I believe that it is justified in a statute of this importance, which has a rendezvous with the history of our federation. Although it is not imperative, it is justified.

**Senator Grafstein:** Honourable senators, I apologize if I took the senator's comments out of context. I simply want to understand his position.

I think he would agree that it is imperative that the preamble be as precise and clear as possible.



• (1600)

**Senator Beaudoin:** Yes.

**Senator Grafstein:** Honourable senators, I wish to refer to the evidence. I was not present for this evidence and, as such, I cannot go through the entire text in detail. However, there is a reference in the proceedings by Mr. Kasirer, who was a witness in support of this legislation, who had this to say:

It was observed earlier by Senator Beaudoin that not all of the civil law finds expression in the Civil Code. It is true, too, that the civil law style is one of the features that differentiates itself from the manner in which federal law generally is expressed.

Was Senator Beaudoin saying that there is civil law aside from the Civil Code in Quebec?

**Senator Beaudoin:** Yes. Of course, the Civil Code is the corpus of the civil law in Quebec. There is no doubt about that. However, we may find legislation that is codified and has the same tradition as the Civil Code, but is not strictly in the Civil Code. The Civil Code was based on the Napoleonic Code, but of course adapted to the situation in Lower Canada.

Civil law is broader than the Civil Code. There may be some legislation passed by the National Assembly of Quebec in some fields which fall under section 92.13, which pertains to property and civil rights. They are part of the civil law, but are not necessarily in the articles of the Civil Code of Quebec. That does not change anything, because in the second "Whereas" it states:

[Translation]

...principal expression in the *Civil Code of Québec*, reflects the unique character of Quebec society;

This is the tradition of civil law in the province of Quebec.

[English]

Both come under provincial legislation, as does section 92.13, and both have something to do with the private law system of Quebec, just as we have the private law system in Ontario and in all the other provinces.

**Senator Grafstein:** Honourable senators, I am not a civilian lawyer but a common law lawyer. As such, I have those limitations. Would it not be more appropriate to say: "Whereas the civil law tradition of the Province of Quebec, which finds its principal expression in the Civil Code of Quebec, and the Civil Code, or the civil law, reflects the character of Quebec society..." if you want those words? Would that not be a fairer expression? By leaving out those laws that are beyond the Civil Code, you are giving an unfair impression of what this recital is really about. Thus, when the courts decide to look at this question, will

they not therefore be limited by this preamble just to the Civil Code?

**Senator Beaudoin:** I do not think that Quebec lawyers have any problem with that. Most of the civilists are experts in civil law and in the Quebec Civil Code. It is not a big problem to apply a statute of the National Assembly of Quebec which deals with civil law matters that are not necessarily in the Civil Code. The Civil Code is so important in private law that, in effect, it comes first in private law in that sense.

However, the way the second "whereas" is drafted does not worry me. It states, in part, "...civil law tradition of the Province of Quebec, which finds its principal expression in the Civil Code of Québec..." — that is 100 per cent true — "reflects the unique character of Quebec society;" it reflects the unique character in the sense that it is the only province with a Civil Code. It is not a value judgment; it is a fact.

I remember when we voted after the referendum on a resolution concerning the question of distinct society. It was adopted by the Senate, as it was by the House of Commons. Of course, it was only a resolution, but it was a decision of a legislative chamber. We are one of the two legislative chambers. We used the words "distinct" or "unique character." One witness said that we should not use the phraseology of our adversaries, those who are in favour of the separation of Quebec. We are not using here anything that is claimed by the indépendantistes. Many federalists use the words of the second "whereas." It is clear-cut to me. They are strongly federalist. How can you explain the contrary, since a resolution was adopted in the Parliament of Canada five years ago?

I respect the opinion of those who say that we may use other words, but what I claim is simple. We may use those words. They are part of our history. They are used by the federalists in the Province of Quebec. I do not see a major difficulty.

I respect the opinions of others. We can always agree to disagree, but I do not see anything wrong in the preamble. Perhaps it could be improved, but I am satisfied with the preamble as it stands.

**Hon. Lowell Murray:** Honourable senators, I have two questions for Senator Beaudoin. The first is with regard to the issue raised by Senator Grafstein, that is, the very idea of a preamble. When he was at the committee, Senator Grafstein told you about such acts as the National Transportation Act and the Telecommunications Act where a preamble was attached in order to give policy guidance from the government and Parliament to various regulatory agencies such as the CRTC and the Canadian Transportation Agency. Is there not another practice of attaching a preamble to a bill that is of fundamental historic importance, as everyone agrees that this bill is? Senator Joyal at the committee spoke of —

[Translation]

...the symbolic and iconic value of the bill.



[English]

• (1610)

This is obviously not the first time a preamble has been included in such a bill. I ask Senator Beaudoin whether he would draw Senator Grafstein's attention to the Official Languages Act and the Canadian Multiculturalism Act, two acts among many that have preambles at least as long as the one attached to this bill and also containing what Senator Joyal derided as socio-political concepts.

**Senator Beaudoin:** Honourable senators, we very often see preambles in constitutional acts. The BNA Act, 1867 had a preamble. We also see preambles in many other statutes that are not constitutional statutes. My honourable friend mentioned some statutes. This is not the first time that we have adopted a statute that is not a constitutional amendment, but rather a statute that contains a preamble. The clarity bill, for example, had a preamble. I do not want to start a discussion on that issue, but the fact is it had a preamble. This bill has a preamble as well. The Official Languages Act has a preamble, as do many others. I do not risk anything by saying that I can find, in a few minutes or a few hours, many bills with a preamble, bills that are not constitutional bills.

Honourable senators, there is no law on this matter. It is up to the legislature to say whether or not its statutes are to have a preamble. It is a choice. Usually, when we consider a bill to be very important, we draft a preamble, but not necessarily. As I said, it is the choice of the drafter and it is the choice of Parliament. In my opinion, a good preamble can help, but it can also be useless if it is a bad preamble.

Honourable senators, we may agree or disagree with one word or one expression in this preamble. As they say in French —

[Translation]

The contents of the preamble are very much justifiable. One can agree or disagree. It is, however, not easy to have a fine preamble. The same thing applies to constitutions. The American Constitution has a lovely preamble that has been universally quoted for 200 years. There are also very ordinary laws, as well as others which, while extremely important, are not constitutional in nature, that include preambles. That does not trouble me in the least.

[English]

**Senator Murray:** Honourable senators, I have another question on the preamble, with a view to assisting Senator Kinsella. I shall probably fail in this, but in defence of the first paragraph of the preamble, it states:

WHEREAS all Canadians are entitled to access to federal legislation in keeping with the common law and civil law traditions;

Senator Kinsella says that this is meaningless.

Is it not the case that in the absence of the harmonization of federal legislation with the civil law of Quebec to ensure that each language version takes into account the common law and civil traditions all Canadians will not have access to federal legislation. Some Canadians will not have access to it because it would be outside their frame of reference.

**Senator Beaudoin:** My opinion is that the first paragraph is very useful. All Canadians are entitled to access to federal legislation in keeping with the common law and civil law traditions. This is what the word "harmonization" means. If we set aside the first "Whereas," there is something missing in the objective of the bill. The objective of the bill is to harmonize our federal legislation with the two private law systems of Canada. This is exactly what federalism is about. The provinces may legislate in property and civil rights, and the federal authority may legislate in criminal law. However, we must harmonize federal legislation with the civil-law tradition, just as we do with the common-law tradition. Harmonization was not a big problem with respect to the common-law tradition because it has always been the same system and the same genius of law. However, when the British Parliament introduced in its colony a new system, it was certainly not common law; it was civil law. It was a system of private law, which we must harmonize.

I will give honourable senators an example — the liability of the Crown as laid out in the Crown Liability and Proceedings Act. Some time ago, we said, "The King could do no wrong," but Parliament has legislated to say that the Crown is responsible for its damages. By way of illustration, if a car accident happens in Quebec, the Civil Code is applied. If the car accident happens in Ottawa, the common law and the laws of Ontario apply. This is the type of harmonization we are discussing here today.

In my opinion, the first paragraph of the preamble is useful. We may agree or disagree with the words used, but the intention is clear. It is meant to harmonize the federal legislation that we enact every session with the civil law tradition in Quebec. This should have been done much sooner, but I will not pass judgment in that respect. I am glad that we have Bill S-4.

The Standing Senate Committee on Legal and Constitutional Affairs was told that this is only the first statute. Other statutes will follow. How many, I do not know, but the legislation of the Parliament of Canada will be harmonized with the tradition of our common law and our civil law.

**The Hon. the Speaker *pro tempore*:** Honourable senators, the time for Senator Beaudoin to take questions has expired.

Does Senator Beaudoin wish leave to take more questions?

**Senator Beaudoin:** Yes, please.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

• (1620)

**Senator Grafstein:** Senator Beaudoin, Senator Kinsella and others have referred to this first recital. Is that recital not directly inconsistent with the Charter of Rights in the Constitution?

Let me explain. This recital reads, "Whereas all Canadians are entitled to access..." Senator Kinsella has a problem with the word "access," as do I, as I have as well with every one of these recitals, but this reads "Whereas all Canadians are entitled to access to federal legislation."

However, the Charter does not use the word "Canadians." The Charter is very careful. This was the subject of a great battle that we had. It is very careful to differentiate between "Canadian citizens" and "everyone."

I would say to Senator Beaudoin that here we have an important bill, with which I agree in principle, that is, the principle of harmonizing law in and for the province of Quebec under federal law, inconsistent with the Charter. Section 6 of the Charter reads: "Every citizen of Canada." Section 7 reads: "Everyone." Sections 8, 9 and 10 read "Everyone." The section on equality rights reads, "Everyone" not "Canadians."

To return to my point, is the first recital not inconsistent with the Charter and therefore raises questions of law?

**Senator Beaudoin:** I have already said this: This bill does not change the civil law of Quebec, the Civil Code of Quebec, or the common law principles of the other provinces. The Civil Code is governed by the Canadian Charter of Rights and Freedoms. The common law principles are guided by the Canadian Charter of Rights and Freedoms. These facts do not change at all with Bill S-4.

As the honourable senator indicated, it is true the Charter sometimes refers to Canadian citizens, "Everyone," "anyone," et cetera. The right to vote, for example, is restricted to Canadian citizens. However, other articles refer to "anyone" or "everyone."

This has not changed. The Civil Code of Quebec must respect the Charter of Rights and Freedoms. The common law legislation or system in the other provinces have to respect the Charter of Rights and Freedoms. These matters do not change.

The first "whereas" refers to "all Canadians." That is not bad, "all Canadians." It is our country.

...all Canadians are entitled to access to federal legislation in keeping with the common law and civil law traditions.

In general, it is true that the Charter distinguishes here and there between "Canadian citizens," "anyone" and "everyone." However, the Civil Code is not changed. The common law is not changed. The Charter of Rights and Freedoms is not changed and

is applicable. What is changed is the spirit. The federal legislation should be in keeping with the civil law tradition. This is what it says, no more, no less.

**Senator Kinsella:** Senator Beaudoin agrees that under the Charter there are three rights that are limited to Canadian citizens: the right to vote, the right to leave and return to Canada; and certain minority educational rights.

I return to section 15 of the Charter. What is so beautiful about this section is that we recognize that everyone in Canada, not just Canadian citizens, is equal before and under the law and has the equal protection and benefit of the law without discrimination. It is beautiful.

**Senator Beaudoin:** It is a masterpiece.

**Senator Kinsella:** It is a masterpiece.

Would it not have been better to omit the word "Canadians" in the first preambular paragraph? I must confess that I agree with the point Senator Murray made in questioning Senator Beaudoin. I think the word "law" would have been a better choice than the word "legislation" in that preamble. The first preambular paragraph uses the word "Canadians," attempting to limit what section 15 keeps open to everyone. In addition, section 15 uses the term "law," not "legislation."

**Senator Beaudoin:** We may certainly discuss section 15. Obviously, it is a masterpiece because the people who worked on the Charter of Rights knew that they had to protect equality under the law, by the law, protection of the law, and equal benefit of the law. When it was a question of equality between men and women, it was enshrined in the Constitution that, notwithstanding anything in the Charter, the law would apply equally to men and women. The text uses the words "male or female persons."

I agree with the comments regarding sections 15 and 28. Perhaps drafters cannot succeed in establishing sections like those in all laws, but the fact is that even the Charter sometimes uses the word "citizen," and sometimes it uses the words "anyone" or "everyone," but that is done on purpose. The right to vote, for example, is restricted to Canadian citizens at the federal and provincial level. Every Canadian citizen has the right to vote and is eligible to do so, in federal and provincial legislation. That is all, but that is a lot. Sometimes the word "everyone" is used, and there may be reasons for that.

Here, the word "Canadian" is not defined, but we know that a Canadian is a Canadian. The term may have a broader meaning, that is, a Canadian citizen, but the word "Canadian" is used.

It is always difficult to draft laws. One cannot foresee every potential interpretation. This country has two systems of private law, so one must also take that into consideration.



I cannot be more precise than that. Obviously, a constitutional amendment is a little bit different. For example, certain sections of the Charter were drafted after the others. Section 28 was of that category. The legislators did not take any chances. They said that, notwithstanding anything in this Charter, laws apply equally to men and women. This, in my opinion, is probably the most important section on equality. Some people even say that equality between men and women is absolute, even if no right is absolute, as we say in court or in the universities, or when we teach to students. No right, no liberty, is absolute. However, one is more important than all the others, namely, the equality of men and women, because section 28 says "notwithstanding anything in this charter."

• (1630)

The wording varies according to the situation, or what we have in mind. After a certain time, we realize that the legislator was lucky to find a good expression in some statutes and not as lucky in the others. Nothing is perfect.

[Translation]

**Hon. Aurélien Gill:** Honourable senators, I would not wish to dampen Senator Beaudoin's enthusiasm, but I have a question for him. He mentioned that the Civil Code had been adopted in 60 countries, and the common law in another 60. Are there Aboriginals in any of these countries? If so, how would you reconcile the Civil Code of Quebec and the Indian Act, since we are talking about harmonizing the two systems?

**Senator Beaudoin:** Honourable senators, in 1867, the issue of the Aboriginal peoples had not really been resolved. Section 91(24) gave the federal government legislative authority over the Indians. However, in 1982, people realized that they had largely been forgotten. Hence section 35, which said that Indians, Amerindians, Aboriginals, First Nations, have treaty rights. The Supreme Court interpreted this as meaning collective rights. Collective rights are rare in the Canadian Constitution.

Denominational rights have been considered collective, as have the rights of Amerindians. The Supreme Court ruled that educational rights — in section 23 — are collective rights. However, in 1982, the government wondered about the protection of Amerindians. It protected their rights and talked about treaty rights, including a section in the 1982 Constitution to that effect. There is a world of difference between 1982 and 1867. I think that Amerindians were protected much more obviously and effectively in 1982 than in 1867.

If you read the Supreme Court decisions, at least 20 to 25 of them have to do with Amerindians. Recognition has been given to rights for Amerindians which nobody else has, which I, for instance, do not have, because they are collective rights protected under the Constitution.

The Civil Code does not change this in any way, nor does the common law. When it can be proven that they have treaty rights, Amerindians are in a class apart. If there is one group in Canada that has particular status, it is this one. Section 35 provides they

have rights, which were interpreted as collective rights. Bill S-4 changes neither the Civil Code nor the common law or section 35, which recognizes certain rights of the First Nations. The law does not affect the collective rights of the Amerindians. When a dispute does arise, whether it concerns fishing or something else, the court will apply the rights of the Amerindians as established by history. Each time legislation is passed on the Amerindians, the problem arises: Are we contravening their collective rights or their treaty rights? If so, they are left alone, in principle. Their situation has therefore been very different since 1982, and for the better.

**Senator Joyal:** Honourable senators, does Senator Beaudoin not recognize that the expression "unique character of Quebec" is politically charged and does not have the unanimous support of the federalists, as he mentioned in his response earlier?

An SOM poll published in 1995, in *La Presse*, revealed that 53 per cent of Quebecers considered the federal government's motion unsatisfactory.

The Supreme Court of Canada, in the reference on the secession of Quebec, recognized that laws of a constitutional nature are not limited to the Constitution of Canada and the Constitution Act, 1982, but include all organic laws relating to the interpretation of the provisions of the Constitution of Canada.

Senator Beaudoin himself recognizes the constitutional nature or scope of Bill S-4. Would it not be better, therefore, to avoid mentioning in the preamble a concept of the political vocabulary that divided Canadians during the 1992 referendum on the Charlottetown Agreement, that divided Canadians in the discussions surrounding the Meech Lake Accord and that continue to divide Canadians.

All of the polls indicate this. I could quote polls done following the Calgary Declaration, where 48 per cent of people oppose the concept in the Calgary Declaration and principally in the references to Quebec.

If we are going to have a bill whose harmonization objectives we accept — as senators from both sides said — and that we want to include a preamble, would it not be better to avoid putting in that preamble political concepts that are divisive and that recent history has shown not to be unanimously approved, both across Canada and by federalists in Quebec?

**Senator Beaudoin:** There are historical facts. I do not see how it would be a mistake for a Parliament to refer to facts that are connected to history. The preamble says that the civil law tradition of the Province of Quebec finds its principal expression in the Civil Code of Quebec and reflects the unique character of Quebec society.

This is a fact and nothing will change that. From a private law perspective, Quebec is unique. It is the only province with a Civil Code. We are not adding anything, we are only referring to facts. Some say that these concepts are used by people who want to divide Canada.



• (1640)

I read the newspapers that report the comments made by the Premier of Quebec and he never talks about that. He talks about the Quebec nation, or about this or that. We are all federalists in this Chamber. If you ask me whether Quebec has a unique character, I will say yes because of its Civil Code. The French language is another matter, because there are francophones in every part of Canada.

The Civil Code is in Quebec, and nowhere else. It has a unique character. Are the words "unique character" going to stir up bad memories? No. They were used in the federal Parliament in 1995. One need only read the newspapers of the day to see that Quebec was described as a distinct society. Both chambers of the Parliament of Canada voted on this. In the House of Commons, it was passed with a strong majority. Where our federal system is concerned, we may want to improve it, change it, bring it up to date, but no one here challenges its existence. We can use such terms as "society with a unique character." I have no problem with that. Some may no doubt feel that we ought not to use those words, that we should end this part of the preamble at the words "Civil Code of Quebec." This would give "whereas the civil law tradition of the Province of Quebec, which finds its principal expression in the *Civil Code of Québec*."

Yes, but that leaves something out! The words "reflects the unique character of Quebec society."

Yet the fact that one province has a Civil Code and the one next to has common law does change something. One has a codified system of private law, while the other has one based on the principles of common law. There is nothing inaccurate about the terms "unique character". I respect those that hold the opposite opinion, but I see no problem with it.

We cannot ignore history. The Constitution is steeped in history. The Constitution of Canada is specific to Canada. It is not part of the history of the United States, France or England. It is our history! There will always be certain words that are used here, but if the facts justify them, I believe that they can be referred to in a bill. No more, no less than that.

[English]

• (1640)

**Hon. Lorna Milne:** Honourable senators, I am not sure whether I am pleased to rise to speak to this bill today.

Bill S-4 is the first step in a major ongoing project undertaken by the Department of Justice. Honourable senators all know that Canada has two legal traditions — the civil law in the Province of Quebec, and the common law in the other provinces and territories. However, this duality has never before been expressly recognized in federal statutes.

Senator Beaudoin has disseminated the history of the development of our system far better than I have, but the fact

remains that most federal laws were drafted by people with a common law background. Naturally, these drafters used terms that they were familiar with to describe legal concepts. Unfortunately, those words and concepts have not always had the intended effect in the Province of Quebec because of their civil law traditions. Many times, judges and lawyers in Quebec were forced to infer the meaning of federal law provisions because common law concepts that were quite foreign to them were used in federal statutes.

In 1994, the Quebec government passed a new Civil Code and the Department of Justice saw the introduction of this new code as an opportunity to begin the work of updating federal laws to include the provisions of the new Civil Code. Bill S-4 is the first step in what will be a long legislative process. I trust that the following bills will not have preambles.

Bill S-4 amends more than 40 federal statutes that are already on the books, without changing the intended effect of any of those statutes. This does not mean the changes are cosmetic. The bill enhances federal laws by adding the proper Civil Code principles. As a result, federal laws will be more effectively interpreted in Quebec.

To give just one example, take the concept of "real property." This is a well-known common law term. When translated into French, the term becomes "bien réel." However, there is no such concept as "bien réel" or "real property" in the Civil Code. The closest comparable civil law term is "immeubles" in French, or "immovables" in English. This bill amends federal legislation to ensure that all four terms are properly used: "real property," "bien réel," "immovables," and "immeubles."

Bill S-4 also takes steps to ensure that the laws containing legally technical terms are read properly. This is achieved in two ways. First, the bill amends the Interpretation Act to specifically recognize the two systems of private law in Canada. Furthermore, the Interpretation Act will now provide that the civil law terms in federal statutes are to be applied in the Province of Quebec, and the common law terms are to be applied in the rest of the country.

Second, it was suggested by the minister that the summary of the bill should be altered to explain that, in the French version of federal statutes, civil law terms are placed ahead of common law terms and that the reverse happens in the English versions. As the committee did not discuss this change, we did not alter the summary, but we agreed to raise the minister's request in our report to the Senate.

On the face of it, this bill may have seemed technical in nature, because it proposes no changes to the substantive laws of Canada. However, as was noted by all members of the Standing Senate Committee on Legal and Constitutional Affairs, this bill speaks, or in some cases sings, volumes about Canada's legal traditions.

The musical nature of Bill S-4 was brought home by several witnesses, including Professor Jean-Francois Gaudreault-DesBiens, McGill University, whose testimony before the committee focused on the principle of harmonization. He spoke about the underlying goal of Bill S-4, which is to ensure that all federal statutes take into full account the civil law traditions in the Province of Quebec and the common law legal traditions, to create a body of law that sings one song in two distinct voices. It is that kind of harmony that the bill seeks to create.

I will take that analogy one step further. Bill S-4 attempts to create a barbershop quartet — federal law that speaks in four legal voices; English common law, French common law, English civil law and French civil law. This bill amends numerous federal statutes — I believe 40 — to incorporate civil and common law terms in both languages that fully and accurately explain the intent of Parliament in the lexicon of each legal tradition and language.

Other than some debate in committee over the marriage law portion of the bill, the members of the Standing Senate Committee on Legal and Constitutional Affairs were unanimous in their analysis of the substance of Bill S-4. The work of officials from the Department of Justice officials has been admirable, and the project is long overdue. The diverse legal traditions in Canada are equally important, and federal law must be expressed in all four voices so that it speaks to all legal communities across our country. To deny any of these voices its place in the choir would be a great loss to all Canadians.

• (1650)

The members of the committee also agreed that the project has international implications. The common law and the civil law, as was pointed out, are the two most widely used legal systems in the world. What is truly unique is for the two systems to coexist in one jurisdiction. After the project is completed, the two systems will not only exist in Canada, but they will work in harmony with one another. Canada's laws will speak in four voices and be applied throughout the country in two legal traditions. No other modern nation can make that claim. This will make Canada even more of a world leader.

As the project develops, it will give Canadians a great opportunity to influence international law. As the pace of globalization increases, so too will the interaction between people and businesses in common law and civil law jurisdictions. As world leaders in harmonization, I expect that Canadians will be asked to help to resolve disputes and influence the development of international private law or "conflict of laws," as the technical legal term goes.

The main area of debate in the committee, as we could tell here today, was about the preamble, and the contentious debate surrounded the second clause of the preamble. I will not read it again because we have heard it several times this afternoon. Some honourable senators were concerned that the phrase "the unique character of Quebec society" in the preamble could have far-reaching consequences outside the scope of the bill. They did not want the value of these changes within the bill in federal law

to be in any way affected by what was seen by some to be a political statement.

Conversely, other honourable senators, and the Minister of Justice who testified before the committee, believed that the entire preamble was crucial for the setting of the stage for this entire project. For those people, it was important to recognize the historic and international context of this project, and to maintain the commitment that both Houses of Parliament made in 1975. That 1975 motion here in the Senate stated, among other things, that:

...the Senate recognizes that Quebec's distinct society includes its French-speaking majority, unique culture, and civil law tradition; and

the Senate undertakes to be guided by this reality.

After a lengthy debate on the preamble and several proposed amendments to it, the amendments in committee were all defeated, with varying votes and abstentions, and the committee voted, on division, to pass the bill and preamble without amendments.

Honourable senators, I urge you to vote in favour of Bill S-4 entitled: the Federal Law-Civil Law Harmonization Act No. 1. By passing this bill, the country will be taking its first major step towards full harmony between our two legal traditions. This bill has widespread support in the legal community and will make the lives of many in the legal profession much easier. More important, as one of the witnesses mentioned, we will finally have Canada's federal laws singing not only in harmony, but also in four-part harmony.

**Hon. Tommy Banks:** Honourable senators, I have a question for the honourable senator.

**Senator Milne:** Honourable senators, I hesitate to take a question from our musical senator. I think the debate this afternoon has probably gone on long enough, and I do not intend to accept questions.

On motion of Senator Robichaud, debate adjourned.

[Translation]

[Earlier]

## VISITORS IN THE GALLERY

**The Hon. the Speaker *pro tempore*:** Honourable senators, before giving the floor to another senator, I wish to draw to your attention the presence in the gallery of our former colleague Joseph Landry. He is accompanied by a gentleman from Acadia, Victor Cormier, of Cap-Pelé in New Brunswick.

On behalf of all honourable senators, I welcome you to the Senate.



## SCRUTINY OF REGULATIONS

### BUDGET PURSUANT TO PROCEDURAL GUIDELINES FOR FINANCIAL OPERATION—REPORT OF JOINT COMMITTEE ADOPTED

The Senate proceeded to consideration of the first report “A” of the Standing Joint Committee for the Scrutiny of Regulations (budget 2000-2001), presented to the Senate on March 29, 2001.—(*Hon. Senator Hervieux-Payette, P.C.*).

**Hon. Céline Hervieux-Payette** moved adoption of the report.

Motion agreed to and report adopted.

[*English*]

## ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

### REQUEST FOR AUTHORITY TO TRAVEL AND BUDGET PURSUANT TO PROCEDURAL GUIDELINES FOR FINANCIAL OPERATION—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Energy, the Environment and Natural Resources (budget—study relating to energy, the environment and natural resources) presented in the Senate on March 29, 2001.—(*Honourable Senator Taylor*).

**Hon. Nicholas W. Taylor:** Honourable senators, I would move the adoption of the report standing on the Order Paper as No. 3, consideration of the second report of the Standing Senate Committee on Energy, the Environment and Natural Resources, involving the budget, which was presented last week.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to.

• (1700)

## FOREIGN AFFAIRS REPORT ENTITLED “THE NEW NATO AND THE EVOLUTION OF PEACEKEEPING: IMPLICATIONS FOR CANADA”

### INQUIRY—DEBATE ADJOURNED

**Hon. A. Raynell Andreychuk** rose pursuant to notice of February 22, 2001:

That she will call the attention of the Senate to the seventh report of the Standing Senate Committee on Foreign Affairs: *The New NATO and the Evolution of Peacekeeping: Implications for Canada*.

She said: Honourable senators will recall that at the urging of Senator Lynch-Staunton and under the guidance of Senator Stewart the Foreign Affairs Committee embarked on a study resulting in its report “*The New NATO and the Evolution of Peacekeeping: Implications for Canada*,” filed in April of 2000. It has now been one year since that report was tabled in the Senate.

It is important to evaluate Senate reports to see whether their contribution is important to the Canadian public policy debate and whether our assessments withstand time.

Many questions were raised by our report and we asked that the Minister of Foreign Affairs reply to it within six months. This has not been done, and nor did the minister make himself available to the committee at the time to answer questions. His initial attendance was cut short and did not afford a meaningful dialogue.

Very quickly, Kosovo crystallized the debate and provided a working model for what NATO has become. The implications for Canada remain unresolved. It is crucial that the Government of Canada address the questions raised in our report. To continue to ignore them further marginalizes Canada in NATO, raises moral issues, questions the capability and capacity of our Armed Forces to meet their obligations, and puts Parliament at risk of greater irrelevance in yet another area of governance.

As the report stated, Canada originally signed on to NATO in 1949 with military action clearly being an Article 5 initiative, that is, “a threat to one is a threat to all.” It was meant to be a defensive alliance. Article 2, an article insisted on by Canada which was to allow for a broadening of the mandate, has never really received attention or full force. When the Cold War ended, NATO set about reshaping itself, culminating in the new strategic concept which formally recast the alliance Cold War era mission from collective defence to what in 1999 then NATO Secretary-General Solana termed as a NATO which will guarantee European security and uphold democratic values “within and beyond our borders.”

Kosovo tested the meaning of this and the role and link of NATO to the United Nations. Therefore, the timely report of the Senate Committee on Foreign Affairs raised questions. I wish to deal with some of the main ones.

It was clear that diplomacy was not producing the desired effect in Kosovo. Much had been written on the ill-fated Rambouillet negotiations and their futility. The intention of the committee was to focus in its report on the legality of the intervention into Kosovo by NATO and, more particularly, on Canada’s role.

As senators will recall, Minister Axworthy continually stated that intervention in Kosovo was just that — military intervention. It was not a conflict and it was not a war. Therefore, Article 5, the mutual self-defence mechanism, was not employed.



When the committee travelled to Europe, more often than not the stated reason for military intervention was not human security but the threat of destabilization of neighbouring countries by the influx of refugees. In fact, this is supported as early as May 6, 1998, when the North Atlantic Council commissioned advice on options for intensified partnership-for-peace activity with Albania and Macedonia. They wanted military advice on options for a NATO contribution to the United Nations-Organization for Security and Co-operation in Europe efforts to monitor these borders, and on possible NATO preventative deployments in both countries.

On page 14 of the fourteenth report of the defence committee of the United Kingdom House of Commons, as printed on October 23, 2000, it states:

The United Kingdom military representative to NATO told us that the planning initiated on May 6 was not concerned with direct intervention in Kosovo but with the potential for spillover of the crisis into Macedonia and Albania. Therefore, there was a real threat of activity, which could cause destabilization in the neighbouring countries.

This activity was due to the Kosovo Liberation Army and the resultant actions taken by the then President Milosevic.

Further actions in the North Atlantic Council continued, but with no clear consensus on military action. At best, it could be said that some multilateral initiative was to be taken. When it was clear that there would be no United Nations resolution, NATO proceeded with its intervention. Human security reasons for the intervention in Kosovo were not raised until near the point of entry by NATO and during the air attacks.

I should like to focus on what Canada's legal responsibility was to enter into Kosovo. The evidence before our committee and subsequent information clearly shows that Canada was not obliged to participate in the NATO operation. There was no Security Council resolution, nor a resolution of the General Assembly. There was no obligation through the United Nations to enter into this regional military offensive of NATO. Indeed, this was not an Article 5 operation. The NATO treaty did not oblige Canada to participate, nor did we need to move from our usual position of requiring a United Nations resolution, as was the case in the Gulf War.

It would be fair to say that no clear and definitive legal obligation existed, nor was one proffered. One can recall all the statements of Minister Axworthy that this was in fact a humanitarian intervention. However, anyone who has studied the Balkans would know it is not so simple, as Rebecca West reminded us in 1943 when she said:

People of humanitarian and reformist disposition constantly went out to the Balkan peninsula to see who was in fact ill-treating whom and being, by the very nature of

their perfectionist faith, unable to accept the horrid hypothesis that everyone was ill-treating everyone else. All came back with a pat Balkan people established in their hearts as suffering and innocent, eternally the massacre and never the massacrer.

At the point of our intervention, the Government of Canada stated that it was the attacks and ethnic cleansing of President Milosevic against the Albanian Kosovars that clearly demanded intervention. In the early stages, the Canadian position was that we would under no circumstances collaborate with the KLA. We chose to ignore the actions of the KLA in destabilizing Kosovo, which in fact were just the type of taunts to which Milosevic would respond with horrific action.

Great comment has been made of the number of deaths that were occurring daily at the hands of President Milosevic. In fact, it is now known that the greatest number of deaths clearly occurred after the intervention and not before. Time is now proving that the KLA did and continues to live up to our first assessment of them.

Canada and NATO not only bombed civilians but also seemed ill-disposed to now defend the Serbian population in Kosovo through peacekeeping measures or other means.

One needs to question how one arrives at the issue of human security. Minister Axworthy's human security reason for entering Kosovo must be judged against some objective standard that would treat all people equally. In his appearance before the committee on November 30, 1999, Minister Axworthy told the committee that the compelling motive of human security was his reason for joining the NATO action. I asked Minister Axworthy on what legal basis Canada was obliged to act on behalf of human security. He replied that on behalf of human security, there are "about seven different conventions of the United Nations."

• (1710)

To this day, I am quite puzzled as to what seven different conventions Mr. Axworthy was referring. To what extent do these so-called seven different conventions of the United Nations compel Canada to act in military operations to achieve these human security goals? Are these operations so self-evident that no parliamentary approval for such military action is necessary?

Further, if these are United Nations conventions and are binding on Canada, as Mr. Axworthy put forward to our committee, this raises the question as to why Canada did not act in the same manner in Chechnya, Rwanda, Sierra Leone and a whole host of other international human security violations. Where does Canada's responsibility for such human security operations lie? When will these conventions arise again that will oblige Canada to act unilaterally without parliamentary involvement? Clearly, our allies did not go into Kosovo making these claims.

It would be fair to say that no one on our committee disputes that there is a role for humanitarian action. What is disconcerting is that it can be unilaterally defined without recourse to multilateral definition, mechanisms or processes. If Canada can determine what is a human security risk, then so can all other nations. Provocation by one segment of a population against another can be a justification for the use of force by any leader in any country at any given time, and human security can be invoked.

The world is already filled with definitions of national sovereignty which led to the repression of minorities. One need only look to Sudan, China, Cuba and the Soviet leaders, not to mention the present day Chechnya crisis, to see that national sovereignty and the justification of force thereafter has no universal standard and, likewise, human security today is but a concept. The Canadian government should utilize its long history of multilateral negotiations to come up with a universal definition and mechanisms before implementation, otherwise it becomes a rather selective politicized mechanism.

Given the actions of the KLA and other extremist Albanian rebels, the people of Serbia, and by this I mean the civilians, need to know that their human security is as necessary and important to Canada, and that there is some objective standard and that these actions are taken by our government in an appropriate, necessary and even-handed manner. All lives must count, as Romeo Dallaire has said, "A child in the Balkans and a child in Rwanda must be equal to the international community."

Finally, Parliament and Canada's external security commitments, as we stated in chapter 8, leave parliamentarians without a key role in foreign policy decisions. With the enhanced activism of the United Nations since the Cold War, and more and more being demanded in UN security-related operations and in the new emerging NATO, and I dare say with scarce military resources, it is extremely important that an enhanced parliamentary oversight of military affairs and foreign policy occur. Clearly, it is the prerogative of the executive to exercise power in foreign affairs and military action.

However, as the committee concluded, the past Canadian practice included sensitivity from previous prime ministers that Parliament should be consulted. In fact, as early as 1926, Prime Minister W.L. Mackenzie King made a pledge to involve Parliament in treaty obligations as well as Canada's participation in foreign conflicts. This role has been diminished over the years. It would not be unfair to say that the parliamentary role in this military intervention in Kosovo was virtually non-existent, save for an eleventh-hour debate.

Therefore, the trend in Canada seems to have been to emasculate Parliament rather than to move to a more modern-day good governance model that would demand an enhanced role for Parliament. In fact, the United States Congress and the Parliaments of the United Kingdom and Australia, to name but a few, have all moved to formally involve parliamentarians to a greater extent, as our report elaborated. Canada has not created new ways and means to have more parliamentary participation,

but has fallen back to the defence that Parliament plays the ultimate role through supply and confidence motions.

As we stated in our report:

For one thing, denying funds to the government and withdrawing confidence are rather blunt instruments for expressing dissenting views on such issues. Moreover, the opportunities for scrutiny and dissent that are offered by the Supply process cannot always be used in an effective or timely fashion. In the case of Kosovo, for example, it was only in November 1999, five months after the action had ended, that Parliament had an opportunity to vote funds expressly earmarked for that operation.

Summarizing our report, it would seem logical to restore the tabling requirements for treaties and other international agreements —

**The Hon. the Speaker *pro tempore*:** I regret to interrupt the Honourable Senator Andreychuk, but her time has expired. Is the honourable senator seeking leave to continue?

**Senator Andreychuk:** Yes, please.

**The Hon. the Speaker *pro tempore*:** Is leave granted?

**Hon. Senators:** Agreed.

**Senator Andreychuk:** I thank honourable senators.

Our report requested that there be a role created for Parliament before new international agreements are signed by Canada and for reinvolving Parliament in a treaty process.

With regard to my final point concerning military intervention specifically and Parliament's role, I wish to quote from the report which states:

We believe that when Canadian military personnel are to be put in harm's way, there should be, at the very least, a full and informed debate in Parliament at the earliest opportunity.

Military interventions and international treaties in general in this globalized world can no longer be treated as issues within the domain of the executive arm exclusively. There are many conflicting points of view that need to be aired. A full, reasoned and informed debate through Parliament is the only way to achieve a consensus of approach. To ignore continually the role of Parliament is to unnecessarily create a divisive atmosphere in Canada when, at the very moment of either military intervention or commitment to an international treaty, a clear, concerted statement from Canada would be desirable.

I believe that the committee has touched on many sensitive issues that Parliament needs to address. One year after the filing of our report I, therefore, call on the new minister, Minister Manley, in his new capacity, to reply to our report as requested and to find the opportunity, within our committee or elsewhere to begin a dialogue that is absolutely essential in this decade.



**Hon. Nicholas W. Taylor:** Honourable senators, I have a question for the honourable senator on this very good report. As the honourable senator will recall, I tried to say much of what was said in the report when the action first took place. I believe I was the only one on this side — in fact, in both Houses — who disapproved of what was going on.

I do not think parliamentary participation would have been much different because CNN had convinced the western world, and Canadians by that time, that they had to intervene. In other words, it is nice to say that Parliament should participate in the decision, but I do not think it would have been any different.

My question concerns something that the honourable senator did not seem to cover in her committee's report. One might argue that they had the right to intervene. However, since when did intervention mean bombing innocent women and children, including those not even in the area involved? They strafed and bombed people living in Serbia with the idea that if they twisted the calf's ear, it would cry enough to make the mother stop doing something. In other words, they were using an old torture system on innocent people.

• (1720)

I also wondered why the committee did not delve more deeply into how NATO dealt with Canada's input. Was there a phone call one morning to Canada demanding: "Get your planes over here"? Was a vote called? How many members voted? In other words, was there any Canadian input into the NATO decision, and how was it organized?

**Senator Andreychuk:** Honourable senators, I beg to differ regarding the honourable senator's first remark on CNN and that the debate would have been no different. Had we started a process such as the one Australia and the U.K. are looking into, I think that we would now have a more informed Parliament that could do its job in educating and communicating with citizens. As our report tried to say, it would provide for a more informed debate in Parliament and, therefore, a more unified stand by Canada if and when we need to intervene.

With respect to the military action, one need only read the report of the U.K. House of Commons Defence Committee. It clearly stated that this type of military action needs to be given more thought than simply saying, "We will bomb for three days and Milosevic will get the point." Our report stated more subtly than did the British report that you do not go in for three days. You had better go in with the worst case scenario in mind, not the optimistic one. As the honourable senator pointed out, we should have considered that Milosevic would not move in three days because there was no unanimity within NATO. We were able to keep the coalition going, but there was a lot of disunity as we went into Yugoslavia. As our report pointed out, not everyone agreed that we went in for the same reasons. In daring us to go in, Milosevic gained some courage.

Once into a course of action of that type, honourable senators, the course of action takes on a life of its own. We should have anticipated that innocent lives would be lost beyond the borders of Kosovo, but Kosovo is part of Yugoslavia. We entered Kosovo. We entered the former Yugoslavia.

**Senator Taylor:** NATO bombed outside of Kosovo.

**Senator Andreychuk:** It is still one country. We entered that country. That is the justification. My point is this: Should we have gone in?

What was the honourable senator's second question?

**Senator Taylor:** How was the decision made?

**Senator Andreychuk:** In our hearings, we were able to find out from NATO headquarters that Canada was involved at the military level, the bureaucratic level and the foreign diplomatic level. Our political leaders were involved in the decisions.

When Minister Axworthy and Minister Eggleton testified, they were soon called to an emergency. We never did have the opportunity to explore those points. Who made the decision to enter at a political level?

I remember Senator Stewart feeling very strongly, as did many senators, that we needed further dialogue. In fact, we were to have that dialogue, but it never came about. We requested it in our report, and we continue to request it. It is fundamentally important to continue that dialogue.

Perhaps that dialogue is not important now for Kosovo because the conflict is over, but we must come to the point of lessons learned from Kosovo. That is why the bulk of my speech concerns the notion that we do not want to repeat entering a conflict that could have been aborted or averted. We should have taken a serious look at what we meant by "humanitarian intervention." It sounded good to the Canadian public and perhaps to our politicians, but in the cold light of day one year later, surely we should be sharper and more democratic. We should think twice before we create a new category that is not called "conflict" and is not called "war," but is called "intervention." That distinction is lost on those people who lost their lives and the soldiers in harm's way.

On motion of Senator Roche, debate adjourned.

## BUSINESS OF THE SENATE

**Hon. Lois M. Wilson:** Honourable senators, I ask for leave to revert to Motion No. 44 on the Order Paper, which is Senator Maheu's motion on Armenia. I was out of the chamber for a brief moment and missed the calling of this item.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators, to revert to Motion No. 44?



[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I would respectfully seek leave to return to item number one on the Order Paper, under the heading of private bills, to permit Senator Kroft to move the second reading of a bill, and to item No. 4, under the heading of Reports of Committees, so he may move adoption of the third report of the Standing Senate Committee on Internal Economy. We may then end with the request by Senator Wilson.

[English]

**The Hon. the Speaker pro tempore:** The motion on the floor is Senator Wilson's request for leave. Is leave granted, honourable senators?

**Hon. Eymard G. Corbin:** Honourable senators, might I inquire if this intervention in debate was scheduled? I am not sure what is going on here.

**Senator Wilson:** Honourable senators, I had wanted to speak to this item on Thursday, but I could not be here. Debate was adjourned in Senator Di Nino's name. He has given me permission to speak to this motion. He hopes to speak tomorrow.

I am informed that, while I was out of the room, I missed the opportunity to speak to Motion No. 44. That is why I am requesting leave to revert.

**The Hon. the Speaker pro tempore:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

[Translation]

**Senator Robichaud:** Honourable senators, I had asked that we proceed to item No. 1, under the heading private bills, and to No. 4, under the heading of Reports of Committees, and then move on to Senator Wilson's motion.

[English]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, we would be prepared to revert to Order No. 4 under Reports of Committees to deal with Senator Kroft's report and to then revert to Senator Mercier's committee report, which is Order No. 5. We would then be prepared to deal with Senator Oliver's item and then with Senator Wilson's request to speak to Motion. No. 44.

• (1730)

**The Hon. the Speaker pro tempore:** If I understand correctly, Senator Kinsella is asking to proceed first to consideration of Senator Kroft's report.

**Senator Kinsella:** Yes, under Reports of Committees.

If you want the opposition's concept, we will give it to you if we proceed in this way. There are two reports: the third report of Internal Economy, and the fourth report of the Selection Committee. Senator Mercier would move their adoption.

Having dealt with reports, we might then pick up where we left off and hear from Senator Oliver. We would then revert to the matter of Senator Maheu's motion.

**The Hon. the Speaker pro tempore:** Honourable senators, is it agreed to follow the order suggested by Senator Kinsella?

**Hon. Senators:** Agreed.

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

### THIRD REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the third report of the Standing Committee on Internal Economy, Budgets and Administration (64 Points Travel System) presented in the Senate on March 29, 2001.—(Honourable Senator Kroft).

**Hon. Richard H. Kroft** moved the adoption of the report.

He said: Honourable senators, this report, which was previously brought to the attention of the Senate, deals with the adjustment of the 64-point travel system to make the system count during the term of the fiscal year rather during the term of the calendar year, as has been the case in the past. To normalize this adjustment, 64 points would be granted as of April 1.

**The Hon. the Speaker pro tempore:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.

[Translation]

## COMMITTEE OF SELECTION

### FOURTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Committee of Selection (membership of certain committees), presented to the Senate on March 29, 2001.—(Honourable Senator Mercier)

**Hon. Léonce Mercier** moved adoption of the report.

Motion agreed to and report adopted.

[English]

## STATUS OF LEGAL AID PROGRAM

## INQUIRY—DEBATE ADJOURNED

**Hon. Catherine S. Callbeck** rose pursuant to notice of March 13, 2001:

That she will call the attention of the Senate to the status of legal aid in Canada and the difficulties experienced by many low-income Canadians in acquiring adequate legal assistance for both criminal and civil matters.

**Hon. Catherine S. Callbeck:** Honourable senators, I rise today to initiate debate on a very serious problem in this country. This problem is fundamental to all we know about being Canadian. It attacks the roots of a democratic society, the rule of law, and principles of fundamental justice. I am speaking of legal aid in this country and the ability of many low-income Canadians to obtain legal assistance for both civil and criminal matters.

Honourable senators, this is more than a matter of simply getting representation for your day in court, rather, we are talking about access to justice. I have raised this inquiry as I firmly believe that justice for many Canadians has become completely inaccessible. Funding cuts to legal aid have resulted in an increasing number of Canadians being unable to obtain legal counsel. Those meeting the financial eligibility requirements for civil legal aid often find the coverage has narrowed and their matter may not be covered. As no national standards exist, coverage varies widely throughout the country.

The result is a large population in Canada that finds itself struggling to deal with legal issues, mostly women, children, people with disabilities, recent immigrants, and Aboriginal peoples — those traditionally in the low-income bracket.

I will speak more about eligibility problems and the regional disparity in coverage later. However, honourable senators, before I extol in greater detail the problems and consequences of the current legal system in Canada, I would provide a brief history of legal aid in this country.

The concept of legal aid developed in the 1970s as a means of providing legal assistance to accused people who had low income. Beginning in 1973 with criminal legal aid, the federal government, through the Department of Justice, entered into cost-sharing agreements with provinces. For civil law matters, funding schemes developed later in the 1970s and were part of the Canada Assistance Plan, or CAP, with the federal government providing 50-cent dollars to the provinces. For both criminal and civil matters, the provinces retained control over how legal aid would be administered and provided.

In 1990, the federal government capped its contribution to criminal legal aid at current levels, approximately \$86 million.

However, this amount has decreased yearly, and funding for criminal legal aid for the period 2001-02 is expected to be under \$80 million a year.

Legal aid for civil law matters moved out of the Canada Assistance Plan in 1994-1995 into the Canada Health and Social Transfer. This meant the 50-cent dollars previously provided for legal aid services were discontinued; rather, as part of the CHST, civil legal aid suddenly found itself competing for dollars with health care, education, and other prominent issues.

Honourable senators, I have provided this brief history of legal aid funding in Canada to reveal a lack of commitment on the part of the federal and provincial governments to provide the necessary funding to run adequate provincial legal aid services in Canada. Consequently, fewer federal dollars are allocated for provincial criminal legal aid programs, and recently civil legal aid has been forced to compete for funding with crucial issues like health care and education. The unfortunate result is an underfunding and ineffectual legal aid regime that does not respond to the needs of the people it should serve.

The underfunded regime has resulted in the implementation of strict eligibility requirements in order to maintain the system. Thus, fewer people are accepted as clients for legal aid services. In Prince Edward Island, applicants are considered eligible if they are on social assistance. They may be eligible if their incomes fall within a specified range. Other factors included in the determination are the applicant's assets and liabilities, the urgency of the situation, the cost of the proceeding, and whether a reasonable person with money would pursue the matter through private counsel. Applicants are also expected to have examined private counsel options prior to applying for legal aid in order to pay whatever they can afford for services rendered.

As I am sure honourable senators can imagine, this gauntlet of tests that the legal aid candidate must pass prior to being accepted weeds out many applicants.

Unfortunately, many of those weeded out we would consider to be living in poverty. Here is one example of a real-world consequence from the strict requirements. Stewart, a 68-year-old grandfather on a pension, was accused of fraud. He says he is innocent.

• (1740)

When applying for legal assistance, his pension of \$877 per month is seen as being too much income for him to be eligible for legal aid. He is about \$44 over the limit. Stewart's charge is serious. It will have enormous consequences for him and his entire family. As a result of being denied legal aid for the sake of about \$40, he is forced either to defend himself or to use his own limited funds in retaining costly private counsel. Unfortunately, with legal aid funding at its current level, people in need, like Stewart, are being turned away.



Inadequate funding also means that those clients eligible for legal aid services are forced to contend with long waiting periods and insufficient staff to help. With only three legal aid lawyers in Prince Edward Island paid for by social services to deal with child support issues for welfare recipients, there is currently a six month waiting period for qualified applicants. This means that a parent on social assistance seeking help and the enforcement of a child support payment must wait six months for the legal wheels to start turning.

Honourable senators, I submit to you that to be put in such a situation is completely unacceptable. There is a huge segment of people in this country, in middle and lower income groups, whose income is deemed not only too high to qualify for legal aid but also too low to pay for the costly services of private counsel. The people who are falling through the cracks in this system are the ones who require the most protection from government: those living in poverty, on social assistance or the working poor.

The working poor are likely the most disadvantaged, simply because the income eligibility requirement is so low that often only those with social assistance can benefit. The working poor, who may be underpaid or underemployed, are often ineligible for legal aid and unable to afford private counsel. As you can imagine, this is causing families and individuals hardship throughout the country.

Apart from inadequate federal and provincial funding, civil legal aid systems in Canada suffer from the problem of interprovincial inconsistency in regard to coverage. For all provinces, only those accused who face the possibility of going to jail upon conviction and who have low income are eligible for criminal legal aid. This provision holds true throughout the country and has existed since the beginning of criminal legal aid.

For civil legal aid, however, there exists much less uniformity between provinces. Legal aid coverage is determined by the province that administers the program. Under civil legal aid, a distinction is drawn between family law matters and other civil matters. Most provinces provide some form of civil legal aid for family law. Cases are examined on their merit and often coverage only extends to serious situations of abuse, or where children are at risk.

For example, legal aid in Manitoba provides assistance in cases concerning child custody and access as well as support matters, including the alteration and enforcement of existing orders. The Province of British Columbia provides coverage for custody and access cases, but only on initial maintenance orders. In other words, it does not provide coverage to alter or enforce existing orders. For example, a parent in British Columbia, seeking legal help in regard to altering her child custody arrangement, found that legal aid would not provide assistance unless she could prove that the potential for serious harm existed for the children. Had this woman been living in Manitoba, however, legal aid would have immediately accepted her case, since the province's family law coverage includes alterations and enforcement of existing orders in child custody cases.

Honourable senators, this is just one example of the disparity that exists throughout the country. The problem is not so much the confusion that results from different provinces offering different services. Rather, it is the unfairness that results from a system that arbitrarily places people in a position of lesser justice, based on where they live.

The president of the East Prince Women's Centre of Prince Edward Island, Andy Lou Somers, provides this thought-provoking remark: "How can you tell a woman that there is justice in the system when legal aid would defend her spouse in criminal court when he is accused of assaulting her but will not provide her with a lawyer to help her leave him?" This statement exemplifies the resulting unfairness of the current system's varying coverage schemes.

Honourable senators, I am not the only one concerned about the status of legal aid and access to justice in this country. Many people in the legal profession are beginning to speak out about the situation. The president of the Canadian Bar Association, Daphne Dumont of Charlottetown, has made it her mandate and has spent years pushing for an improved legal aid regime. She recently stated:

...governments at both the federal and provincial level have failed their constituents by neglecting the legal aid system throughout the country. Legal aid is dangerously underfunded, depriving people of their democratic rights.

The former Chief Justice of Prince Edward Island addressed the issue of poor access to the justice system at his retirement last year. Justice Norman Carruthers expressed his concerns about the growing number of people coming to court without legal assistance, defending themselves to the detriment of their own case and the entire court, and causing delays to the already busy schedule. He said that more money must be put into legal aid to reverse this troubling scenario.

Honourable senators, as members of the legislative branch of government, we have often referred matters to the judiciary for their expert legal opinion. The judicial branch is now appealing to us for support. From within, lawyers and judges are aware of the problem of justice being denied to the common person. Although it is the judiciary's responsibility to ensure that individuals are treated equally before the law, it is our responsibility to ensure that all citizens have equal ability to come before the law, to seek resolutions to their problems. That is the intent behind the legal aid system in this country.

Honourable senators, I put it to you that Parliament's intention for legal aid in Canada is no longer being met. It is time to view the justice system in Canada in a similar vein as health coverage in that we insist that our health care be accessible to all individuals, regardless of income. Though health care may be the most important part of our nation's safety net, few would argue that secure legal rights, including a right to representation in court, is also important.



Unfortunately, many people who have experienced problems with the legal aid system often do not voice their concerns, since to do so would be an admission of reliance on legal aid and belonging to a lower income class. This shame or embarrassment does not accompany voiced concerns over health care. Therefore, deficiencies in our health care system frequently receive much publicity.

Honourable senators, many of us in the chamber today, in our former lives in the private sector, would not have given much thought to the plight of legal aid as we were likely fortunate enough to obtain private counsel for our legal matters. However, by providing one system of justice for low income people and another for high income people, we are condoning and promoting lesser justice based on status and wealth.

Obviously, honourable senators, there will always be a class system in our society whereby the wealthier among us will have access to certain goods and services unavailable to those less fortunate.

**The Hon. the Speaker *pro tempore*:** I regret to advise the Honourable Senator Callbeck that her time has expired. Is she requesting leave to continue?

**Senator Callbeck:** Yes.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker *pro tempore*:** Please continue.

**Senator Callbeck:** However, I submit to you that justice and access to a fair trial is not a service that should be distributed based on how much money we earn.

Honourable senators, the legal aid system in Canada is truly offering. It needs our immediate help, as parliamentarians, if it is to fulfil its mandate of providing qualified legal assistance to the many who need it. I encourage all honourable senators to take part in this inquiry. I hope that, through our discussions, we will thoroughly examine this issue and come up with some effective solutions so that all Canadians, regardless of their nature in life or place of residence, are able to access justice and receive equitable treatment in court.

On motion of Senator Hubley, debate adjourned.

• (1750)

## NATIONAL DEFENCE

### QUALITY OF FAMILY LIFE IN THE MILITARY— INQUIRY—DEBATE SUSPENDED

**Hon. Erminie J. Cohen** rose pursuant to notice of March 27, 2001:

That she will call the attention of the Senate to the quality of life of the military family and how that quality of life is affected by government actions and by Canadian Forces policy.

She said: Honourable senators, I rise today to address a matter of great importance to the more than 59,000 members of the Canadian Forces, their families and the Canadian people. I refer to the quality of life of Canadian military families.

On March 14, the Honourable Senator Lucie Pépin said in this chamber:

In working to improve the defence of our country, we must pay attention to what is going on where our military personnel and their families live.

I welcome her future participation.

This topic was largely ignored for many years. In October, 1998, the need for meaningful action was finally identified and acknowledged. The House of Commons Standing Committee on National Defence and Veterans Affairs produced a report entitled "Moving Forward: A Strategic Plan for Quality of Life Improvements in the Canadian Forces." In a March, 1999 response, the government promised to act on the report's 89 recommendations but warned that in some cases it might not take the same approaches.

This was followed in December, 1999 with an interim report by the Department of National Defence on the progress made in implementing the "Quality of Life" recommendations. Finally, in March, 2000, we received the first annual report.

In May, 2000, a document entitled "Report on the Canadian Forces' Response to Woman Abuse in Military Families" was prepared by the Muriel McQueen Fergusson Centre for Family Violence Research at the University of New Brunswick and the RESOLVE Violence and Abuse Research Centre at the University of Manitoba, with the support of the Canadian Forces. In response, the Canadian Forces released an "Action Plan on Family Violence and Abuse." Last October, the Director of Military Family Services developed a booklet to help Canadian Forces communities identify and respond to family violence.

We look forward to hearing Senator Pépin's comments on these and other initiatives.

It is clear that progress is being made, or at least attempted, on a number of fronts relating to the quality of life in the military. However, it is not at all evident that the various reforms are being felt by the people whose lives they are intended to improve.

I welcome the formation of the new Standing Senate Committee on Defence and Security. I hope that it will keep these issues front and centre.

Canada's military continues to face tremendous pressures as a result of government budget cuts and growing demands. Those pressures have added to the already considerable strains on Canadian Forces members and their families, who must live their lives within the framework set for them by the military.

As a result of a 23 per cent cut in defence spending between 1989 and 1998, the number of Canadian Forces personnel has fallen dramatically. Canada went from 87,000 uniformed men and women in 1989 to about 59,400 today, with further reductions forecast. They are also supported by a much smaller civilian workforce, which has been reduced from 34,500 to under 20,000.

Meanwhile, there has been no corresponding decrease in the workload of the Canadian Forces or any scaling back of the expectations placed on them. In fact, Canada is deploying Canadian Forces personnel more frequently to more operations than at any time since the Korean War.

Consider, honourable senators, that from 1948 to 1989 Canadian Forces members were deployed in 25 operations. In contrast, since 1989, they have been deployed on no fewer than 65 missions. They are doing much more with much less. This has had a significant effect on the quality of life of military personnel and their families.

I have spent my entire life in civilian society and until last year was not familiar with military life and its challenges. This changed in March, 2000, when I addressed a group of artillery officers' spouses at CFB Gagetown, an army combat training centre near Oromocto, New Brunswick.

While a guest at the base, I had the opportunity to speak personally with a number of military spouses. I was moved, impressed, and at times shocked by the situations military families must deal with and the challenges they face.

Canadian Forces members get the attention they deserve, but it is their spouses and children who are the unsung heroes of Canada's military. They quietly serve.

Due to the realization that most Canadians know very little about military families and my own need to learn more, I arranged to return to CFB Gagetown to speak with spouses and Canadian Forces members, from both the officer and junior ranks, about their experiences, their adjustments and what it means to be part of a military family. Although I had assurances of total cooperation from the highest-ranking offices, it was important to me that the meetings be informal rather than structured, in order to generate open, honest discussions about any concerns they had.

When I returned last September, I was welcomed into their community and into their lives. I met with about 45 people, individually and in groups, aged approximately 25 to 45. They included officers and junior rank personnel, as well as military spouses. Some of the spouses were francophones, who related

their experiences living in an anglophone environment. Some were members of the Canadian Forces.

The Camp Gagetown meetings provided a lens through which to view many aspects of military life. I would not presume to claim my study was comprehensive or that I am an expert. A number of the concerns I heard related specifically to CTC Gagetown and to army life more generally, as many of the people interviewed shared their experiences on other military bases. However, I realize that navy and air force families could provide additional insights.

In spite of the concerns they voiced, many assured me that they like army life and are proud of their contributions to Canada. I found it interesting that the younger officers were more sensitive to the requirements and needs of the families than their predecessors, who were part of the rigid culture of the institution.

The people with whom I met also want Canadians to know of the challenges that are part of the life they have chosen and want the government to examine and address their concerns. As one pointed out, "The military is not just a job; it's a lifestyle."

The aim of this inquiry, honourable senators, is to consider ways to improve the living conditions of Canada's military families and, in so doing, to celebrate their contribution.

Those living conditions are affected by a number of factors, which, in turn, are characterized by a lack of control over aspects of day-to-day life that we civilians take for granted. For example, the military tells you where you will live and for how long, and often the type of housing in which you must live. It also separates you from your family for long periods while at the same time physically removing your family from its support network of relatives and friends. The family is often cut off from civilian society as well, and can feel isolated even within the military community because of rank or language barriers. This affects the lives of army personnel and spouses.

Consider the problems caused by the frequent moves to which military personnel and their families are subjected. While no one argues with the fact that these moves are necessary for operational effectiveness, there was a strong feeling that the military should be doing more to offset the hardships they cause.

Many people were frustrated by their lack of input in the posting process. One said, "I felt the career manager was determining our future for our family." They acknowledged that they could submit posting preferences but said that these preferences were often ignored. This feeling of lack of control was particularly pronounced among junior ranks personnel and spouses and those who had special-needs children or were caring for disabled relatives.

**The Hon. the Speaker *pro tempore*:** Honourable senators, it is now six o'clock. Do I have permission not to see the clock?

**Hon. Senators:** Agreed.



## FOREIGN AFFAIRS

COMMITTEE AUTHORIZED TO MEET  
DURING SITTING OF THE SENATE

**Hon. Peter A. Stollery:** Honourable senators, the Foreign Affairs Committee is waiting to hold hearings. I request permission for the Foreign Affairs Committee to sit now, while the Senate is sitting.

**The Hon. the Speaker *pro tempore*:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

• (1800)

## AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET  
DURING SITTING OF THE SENATE

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, the Agriculture Committee also has a hearing scheduled, in case they have witnesses and did not expect the Senate to be sitting, we should grant the same permission to that committee. Perhaps that order could also apply to the Agriculture Committee.

**The Hon. the Speaker *pro tempore*:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

[Translation]

## BANKING, TRADE AND COMMERCE

COMMITTEE AUTHORIZED TO MEET DURING  
SITTING OF THE SENATE

**Hon. Marie-P. Poulin:** Honourable senators, with leave of the Senate, I move that the Standing Senate Committee on Banking, Trade and Commerce be allowed to sit now, even though the Senate is sitting. A meeting was scheduled for today.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

[English]

## NATIONAL DEFENCE

QUALITY OF FAMILY LIFE IN THE MILITARY—  
INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Cohen that she will call the attention of the Senate to the quality of life of the military family and how that quality of life is affected by government actions and by Canadian Forces policy.

**Hon. Erminie J. Cohen:** Honourable senators, before our discussion on procedure, I was about to say that a frustration that arose repeatedly was the fact that Canadian Forces personnel do not have the option of trading postings with similarly qualified members who are available, as can be done in the United States military.

Honourable senators, we all know that many families need two incomes to achieve a comfortable standard of living, or sometimes just to make ends meet. However, frequent moves can make it difficult for military spouses to find and keep jobs, let alone build careers. Often, when a family is posted to another base, the civilian spouse cannot find a job that pays enough to maintain their previous standard of living, and the whole family suffers.

One of the Gagetown women told me she originally wanted a career in law, but realized she could not have one as a military spouse. Some said they experienced discrimination from employers because they move so often, and some suggested that the military should develop a policy to help military spouses find employment on bases. Furthermore, the extra child care responsibilities associated with the lengthy absences of Canadian Forces members can make it even more difficult for military spouses to find employment.

As a result of the difficulties in obtaining spousal employment, the standard of living for some military families is not as high as it could, and should be, in particular for those in the junior ranks. Many have had to visit the food bank in Oromocto, the town in which the base is situated. It is a source of shame that Canadian Forces members should have to rely on food banks to feed themselves and their families.

It is evident that many Canadian Forces members, particularly those in the junior ranks, are not adequately paid to begin with.

The pay issue was well documented in the "Quality of Life" report, and some corrective measures have since been implemented. Last year, rank-and-file troops finally got a 2.5 per cent pay raise. The government's latest spending estimates earmarked a further \$600 million for the military, with 40 per cent going to pay increases. Many of those at my Gagetown meetings noted that the pay raise didn't make much of a difference once taxes were factored in, and many complained their rents were increased at the same time.

Honourable senators, the quality of life cannot be reduced to just a monetary equation. As one of the participants said, "Even with pay raises, it's all the other stuff." Some of that "other stuff" has to do with the long absences of Canadian Forces members from their families during training or peacekeeping assignments. These have become more frequent as a result of Canada's increased participation in overseas missions and as a result of personnel cuts.



Some spouses described how an absence of six months or more can disrupt their families for much longer than that and have long-term effects. Those left at home must run the house and look after the children's needs. They develop their own ways of doing things. At the same time, absent spouses get used to doing things their way. As a result, there is a whole process of family reintegration that must take place when Canadian Forces members return home.

During such separations, military spouses have traditionally relied on each other for support. This unusual bonding is remarkable and a story in itself, and one of celebration, but because of frequent moves, military families must continually rebuild these support networks. This is made more difficult by the fact that the traditional social separation between officers and junior ranks appears to extend to their families as well.

In Gagetown, I was told that spouses are often reluctant to call on the military for assistance because they are afraid they will be considered an "administrative burden" and that this would hurt their military spouses' performance evaluations. Some women did not even feel comfortable calling their husbands overseas during family emergencies.

I was told, however, that when a Canadian Forces member is deployed on a long overseas posting, the military would move his or her spouse to a so-called "selected place of residence" in order to be closer to their immediate family. Unfortunately, the way this policy is applied seems to lack common sense. For example, there was one case involving a military wife who was pregnant and had an infant at home when her husband was sent on a long posting. She was living off base and wanted to move on to the base for support from the other spouses, but she was told that she did not qualify because she lived too close. Instead, the military offered to move her clear across the country, at great extra expense, to be near her parents.

To be fair, I should point out that the Canadian Forces are slowly moving in the right direction when it comes to providing support for military families. In 1991, the centrally-run Military Family Support Centre was developed. It is implemented on military bases through Military Family Resource Centres. While the people I spoke with at CFB Gagetown were generally supportive of the idea behind such centres, there was criticism about the way they operate.

Most believed they were not providing the services they expected, especially during family emergencies. There was a major confidence issue as well. Many believed their requests for assistance and their conversations would be transcribed and passed on to the military hierarchy. Almost everyone identified problems with the centres' administration, such as the limited number of hours during which they are staffed. These could be solved, they thought, if the centres were under the jurisdiction of the base and not Ottawa. I believe the resource centres have the potential to become valuable assets, but they cannot be all things to all people.

**The Hon. the Speaker *pro tempore*:** I regret to interrupt the honourable senator, but her time has expired. Is the honourable senator asking for leave to continue?

**Senator Cohen:** Yes, I am.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Cohen:** Substandard housing was also identified as a major problem for families at CFB Gagetown. I heard many stories about mould and mildew, odours, and poor insulation leading to ice buildup on windows and on inside walls. A number of the people reported that the mould, in particular, had caused respiratory problems and rashes, and aggravated asthma in their children. Several told me about families moving off the base for health reasons — when they did, the health problems lessened and often disappeared.

This aspect of military life was also covered quite thoroughly in the "Quality of Life" report, and some actions have been taken since its release.

At the same time, I was told that Canadian Forces members often do not have a choice about what house they will live in, and that larger houses seem to be reserved for officers and their families. In particular, junior-rank members do not appear to have any say at all in their accommodations, although officers can sometimes turn down units that are not acceptable.

My Gagetown meetings confirmed that family violence also continues to be a problem within the military as, unfortunately, it does in Canadian society at large. I heard conflicting accounts as to the military's treatment of abusers, with some people saying, "The military doesn't want to know about it," and others claiming the military is tough on abusers.

Some victims are silent so as not to hurt their husband's career. One person claimed that the 1950s family model perpetuated by the military culture, in which many women have no power in the home, is a breeding ground for spousal abuse.

As Lieutenant-General Mike Jeffrey, the Commander of the Army, stated in a recent press interview, "Weaning the army away from the old he-man attitudes is as tough as weaning a smoker off the weed...but there's no choice...an army must reflect the society that it is sworn to defend."

Honourable senators, there is much more to be said about this critical area, and I know Senator P  pin will be commenting on it at a later date.

Many of the problems already mentioned are compounded in the case of families where both parents are Canadian Forces members. For example, I spoke to one former soldier who left the military because, had she stayed in uniform, she would not have been able to follow her husband, who was also a soldier to a posting. I heard that female members continue to face discrimination, although there has been progress in the past 15 years.

Consider also, honourable senators, the problem experienced by francophone spouses whose families are posted to an anglophone community, or vice versa. Some of the Gagetown participants told me that language barriers make it hard to access medical help. The children also experience discrimination in the schoolyard. The francophone spouses expressed a desire to learn the language because of their social and professional isolation, and would therefore like to have more intensive language training made available to them.

Participants also complained that the military often makes personnel take their annual leave when it is convenient for the military, rather than when it is convenient for Canadian Forces members and their families.

• (1810)

As well, there was the sense that military families are being "nickelled-and-dimed." For example, participants mentioned that dependants no longer qualify for free service flights and that spouses now have to pay to send mail to Canadian Forces members who are posted overseas. There were many concerns expressed about the poor quality of the new uniforms.

All of the concerns I heard from the parents I interviewed have an effect on the children of military families. While I did not talk to any children, I have permission to share with honourable senators part of an essay written by the teenage son of an officer. The title is "They." He writes:

The thirteenth time now. All over Quebec, Ontario and the Atlantic provinces I have moved from PMQ to PMQ (Permanent Married Quarters). Why do they call them "permanent"?

Nothing is permanent with the army. Every time I begin to settle down and make some friends they decide a posting would be nice. Every time I begin to fit in and start to like my new house they decide to move us. Every time I get a girlfriend and I really start to like her, yeah, you guessed it, they decide to move us.

They separate my family for a year and expect us to just live like normal. Is my family's life normal? Is having a new school every year normal?

Honourable senators, while assessing the progress thus far in implementing recommendations made in the "Quality of Life" report, bear in mind these few additional comments made by the Gagetown participants. They are:

The military doesn't have the finances to support its members...How is it going to look after its dependants?

You don't know the reality unless you're in it...Government report writers don't see the day-to-day functions of the military.

I think a lot of positive action has been attempted. Theoretically, it works very well on paper. The reality is that it's still not implemented. There are still many prejudices against women, against children, against families.

Those meetings with women really work — I wish you could do this more often.

Finally, one witness said:

A lot of people are trying very hard to make this a good place to be for our families and we're working really hard at it, but there's still a lot of work to do for sure.

Honourable senators, these statements underline the importance of examining the scope and impact of the various measures that are being undertaken to improve the quality of life of our military. They also underline the importance of keeping this issue squarely in the sight of Canadians and the politicians who represent them. As Lieutenant General Mike Jeffrey said:

We are trying to change the culture of an institution while protecting the principles on which the institution is based.

He admitted that this was difficult. He said that it will not change overnight, but he did say that what we can hope to change in the relative short-term is behaviour and conduct.

Honourable senators, this is indeed a propitious time. With the creation of a standing Senate committee and the introduction of this inquiry, I feel confident that discussion and debate on the quality of life in the military vis-à-vis the recommendations proposed in the "Quality of Life" report will be implemented in a way that accomplishes their stated objectives.

Honourable senators, what better place to reopen discussion and debate on the quality of life in the military family than right here in the Red Chamber. As one of the Gagetown witnesses pointed out, it does not matter how many fine words the government prints, what matters is the effect they have. If the quality of life of military families is not appreciably improved, what good are all the reports in the world?

Honourable senators, I thank you for your attention and I hope that this inquiry will motivate you to enter into debate.

I ask leave of the Senate to table a report in which I summarized the testimony of the participants in the Gagetown meetings.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is leave granted to table the report?

**Hon. Senators:** Agreed.

[Translation]

**Hon. Lucie Pépin:** Honourable senators, I should like to thank Senator Cohen for drawing our attention to the issue of the quality of life of military families, which is an important one.



[English]

My honourable friend met with military women in informal settings to ensure that her report was reliable and factual. Did the women wish to have follow-up meetings? What action do they wish us to take?

**Senator Cohen:** I cannot begin to tell honourable senators how important it was to meet with women in an informal setting — and by that, I mean pizza parlours and little restaurant gatherings — without army brass present, just the women, my researcher and myself. They felt so free to express their concerns and their problems that it was a wonderful experience. When we left, they asked us to please tell our colleagues to send more women. They did not want to let the bureaucrats decide what should happen to them. They wanted us to relay their message.

I feel that it was a valuable experience. I believe that many of us should make personal visits to army bases and other areas without being accompanied by those who represent the formal structure of government.

On motion of Senator Pépin, debate adjourned.

### ETHICS COUNSELLOR

#### MOTION TO CHANGE PROCESS OF SELECTION— DEBATE ADJOURNED

**Hon. Donald H. Oliver,** pursuant to notice of March 20, 2001, moved:

That the Senate endorse and support the following policy from Liberal Red Book 1, which recommends the appointment of “an independent Ethics Counsellor to advise both public officials and lobbyists in the day-to-day application of the Code of Conduct for Public Officials. The Ethics Counsellor will be appointed after consultation with the leaders of all parties in the House of Commons and report directly to Parliament.”;

And that this Resolution be sent to the Speaker of the House of Commons so that he may acquaint the House of Commons with this decision of the Senate.

He said: Honourable senators, I believe it to be very timely that we begin debate today on this motion as controversy swirls around the Prime Minister and his Ethics Counsellor regarding the Prime Minister's conduct relating to the Auberge Grand-Mère. The House of Commons today debates a motion in which the House calls for the establishment of an independent judicial inquiry into the whole Shawinigan affair. I do not want to dwell upon the facts of that case and I do not want to rehash the facts in the debate on this motion, but I submit that, had a person in whom Parliament had placed authority and trust — an independent ethics counsellor with the power to investigate all the facts — pronounced on this matter and the involvement of the Prime Minister, the matter would have been over some time

ago with the outcome, whatever it was, accepted by parliamentarians and the Canadian people.

**Senator Taylor:** That is wishful thinking.

**Senator Oliver:** It would have been accepted, just as we accept the judgments or decisions rendered by our judiciary — men and women operating with security of tenure, not beholden to the one who appointed them — interpreting the law in a just and even-handed manner.

The motion of which I gave notice two weeks ago, is taken directly from the Liberal Red Book 1 and is similar to the motion debated in the House of Commons on February 8 of this year, a motion defeated by the Liberal majority in the House of Commons. It is my hope that, in the less political atmosphere of the Senate, we can join together senators on both sides of the house to support this motion, realizing that we should be able to impact the discussions in the other place.

Honourable senators on the other side should also note that a commitment similar to that contained in Red Book 1 regarding the Ethics Counsellor was also contained in the election platform of the federal Progressive Conservative Party in the 2000 general election.

It is now argued by the government that the Prime Minister is ultimately responsible for ethics and therefore we could not have an ethics counsellor reporting to the house; but the Prime Minister, as leader of the government, is ultimately responsible for many things. He is responsible for the Official Languages Act, for the privacy law and for the Freedom of Information Act.

However, that does not prevent us from having an Official Languages Commissioner, a Privacy Commissioner, and an Information Commissioner with investigatory powers reporting to Parliament. This argument against appointing an independent ethics counsellor essentially fails because equivalents are in fact in place in other significant areas.

In fact, establishing this independent office would, as was pointed out in debate on this matter in the other place, complete the circle of accountability. Within that circle would be the financial watchdog, our Auditor General, the Privacy Commissioner, and the Information Commissioner, who has done so much lately to alert Canadians to unnecessary and unwarranted secrecy in government in Canada. With the creation of the position of independent ethics counsellor, Canadians would be able to see the checks provided on government activity by independent officers of Parliament.

• (1820)

In March 1997, the report of the Special Joint Committee on a Code of Conduct for Parliamentarians was tabled. I was privileged to table the report in this chamber as the co-chair of that committee from the Senate. Peter Milliken, MP, now Speaker of the House of Commons, was the co-chair from the House of Commons side.

As well as recommending a code of conduct, the joint committee recommended that such a code be enforced by what we called a "jurisconsult," who would be an officer of Parliament, and who would report to a joint committee on official conduct. The jurisconsult model recommended in this report could serve as a model for the ethics counsellor proposed in this motion.

We believed at that time that the jurisconsult would be appointed by a resolution of both the House of Commons and the Senate for a specific term that could be extended. The jurisconsult could only be removed from office by a joint resolution of the Senate and the House of Commons.

The jurisconsult would apply and enforce a code of conduct that would apply to all parliamentarians, and report annually to Parliament through the Speakers of both Houses. Specifically under the heading "duties and procedures," the jurisconsult was to "review and to investigate complaints about the conduct of parliamentarians and to report the findings to the Joint Committee." This would allow transparency and fairness for all parliamentarians in their financial dealings, and with regard to any complaints of impropriety lodged against them.

Yes, we know that the Prime Minister has published a Conflict of Interest and Post Employment Code for Public Office Holders. The ethics counsellor is charged with the administration of this code, and the application of conflict of interest compliance measures. However, because the ethics counsellor is appointed by and responsible only to the Prime Minister and has no real investigatory powers, the enforcement and application of this code is therefore suspect, especially when the person being investigated, or at least under a cloud of suspicion, is the Prime Minister.

When one goes back historically, it was never envisioned that the person whose behaviour was suspect would be the Prime Minister. When we look at the Pearson era, one only has to review Prime Minister Pearson's letter dated November 30, 1964, to his cabinet ministers to see the high standards that Prime Minister Pearson demanded of his cabinet ministers and, by inference, himself. I quote from that letter:

In order that honesty and impartiality may be beyond doubt, members of ministers' staffs, equally with ministers, must not place themselves in a position where they are under obligation to any person who might profit from special consideration or favour on their party, or seek in any way to gain from special treatment from them; equally, a staff member, like a minister, must not have a pecuniary interest that could even remotely conflict with the discharge of his public duty.

These are the basic standards of conduct which have in fact been generally observed. We must be able to rely on them completely as those responsible for the conduct of public business. There will undoubtedly be additional

remarks that you will want to express to your own staff, as I will to mine, related to special circumstances of your department.

The essential thing is to ensure that all appreciate the grave responsibility, not only that we have but that the members of our staffs and others in positions of authority have, to maintain the confidence of the people of Canada in the probity of government in this country.

I need hardly add that, in the last analysis, the responsibility in all these matters falls on all of us as ministers.

More recently, in Great Britain under the current Prime Minister, a comprehensive ministerial code of conduct was issued in 1997. It dealt in depth with a number of issues, but one in particular bears repeating here as it has some relevance to the case in which the Prime Minister presently finds himself.

Under Part I, "Minister of the Crown," paragraph iv states:

Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with relevant statutes and the Government's Code of Practice and Access to Government Information.

Paragraph viii states:

Ministers in the House of Commons must keep separate their role as Minister and constituency Member.

Finally, in Part 6, entitled "Ministers' Constituency and Party Interests," paragraph 64 states:

Where Ministers have to take decisions within their Departments which might have an impact on their own constituencies, they should, of course, take particular care to avoid any possible conflict of interest.

Honourable senators, I believe that if we had a code of conduct that contained these statements administered by an independent ethics counsellor, a jurisconsult, the affair Auberge Grand-Mère would have been disposed of one way or another, conclusively, months if not years ago.

We as senators owe it to Parliament to put aside petty political differences and join together in support of this motion. We will send a clear message to the House of Commons and to the people of Canada regarding our belief in the need for an ethics counsellor to Parliament an ethics counsellor with proper investigatory powers, enforcing a comprehensive code of conduct applicable to all parliamentarians.

On motion of Senator Finnerty, debate adjourned.



## LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO STUDY  
CHIEF ELECTORAL OFFICER'S REPORT ON  
THE THIRTY-SEVENTH GENERAL ELECTION

**Hon. Lorna Milne**, pursuant to notice of March 29, 2001, moved:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine the Chief Electoral Officer's Report for 2000 on the 37th general election; and

That the Committee submit its report no later than June 30, 2001.

She said: In brief explanation of this motion, I should point out to honourable senators here that the Standing Senate Committee on Legal and Constitutional Affairs is in the unusual position right now of having no bills before it. In the last session of Parliament, when we were discussing the last Elections Act, the Chief Electoral Officer appeared before us and offered to come back and speak to us at any time. I will quote him. He is talking about the accuracy of the electoral lists:

We made a presentation at the Advisory Committee of Political Parties about the concession of the list, about its accuracy at any one time. We went into detail in front of all the political parties. I did the same thing with the House of Commons Committee on Procedure and House Affairs, and I am ready to come back to this committee at any time, Madam Chair, to give you the same presentation, so that I can address, in a much more intelligent way than I have been able to do this evening, all the questions put to me about the accuracy of the register. I would very much appreciate that opportunity.

Since we cannot invite Mr. Kingsley back to the committee without an order of reference from this place, we are asking for that order of reference so that he may come and appear before us tomorrow afternoon when the Senate rises and talk about the accuracy of the electoral lists in the last election in the context of his report, since he appeared before the comparable House of Commons committee last week.

I should also point out that Mr. Kingsley is on leave this week but has made arrangements to come back and appear before the committee tomorrow.

Motion agreed to.

• (1830)

## RECOGNITION AND COMMEMORATION OF ARMENIAN GENOCIDE

MOTION—DEBATE CONTINUED

Leave having been given to revert to Motion No. 44:

Resuming debate on the motion of the Honourable Senator Maheu, seconded by the Honourable Senator Setlakwe:

That this House:

(a) Calls upon the Government of Canada to recognize the genocide of the Armenians and to condemn any attempt to deny or distort a historical truth as being anything less than genocide, a crime against humanity.

(b) Designates April 24th of every year hereafter throughout Canada as a day of remembrance of the 1.5 million Armenians who fell victim to the first genocide of the twentieth century.—(Honourable Senator Di Nino).

**Hon. Lois M. Wilson:** Honourable senators, I speak in support of the motion of the Honourable Senator Maheu. For the survivor generation, it is inconceivable that the world would ever doubt what had occurred. Many articles and books appeared subsequently to document the events of 1915 to 1923 in Armenia. The U.S. Ambassador to Turkey from 1913 to 1916, in his 1918 published account, told what had transpired in the Ottoman capital during the deportation and massacres, the admissions and denials of Turkish officials, and specifically with relation to the Armenian genocide.

Arnold Toynbee, the distinguished historian, has written movingly and documented events in several books, one of which is called *The Armenian Atrocities: the Murder of a Nation*. In 1985, a permanent Peoples Tribunal, which has evolved from the tribunal established by Bertrand Russell, considered the case of the Armenian genocide during a sitting at the Sorbonne in Paris. The tribunal's verdict confirmed that the Armenians had been victims of genocide, that the crime was not subject to any statute of limitations, and that the United Nations and its member states should recognize the "reality of the genocide and take..." measures to mitigate its effects. The events, as documented by historians, scholars and witnesses, are consistent with the definition of "genocide" in article 2 of the Geneva Convention of 1946.

There have been numerous international affirmations of the Armenian genocide. The United Nations Economic, Social and Cultural Commission on Human Rights, in July 1985, declared as follows:

Toynbee stated that the distinguishing characteristics of the 20th century in evolving the development of genocide are that it is committed in cold blood by the deliberate fiat of holders of despotic political power, and that the perpetrators of genocide employ all the resources of present day technology and organization to make their planned massacres systematic and complete.

Among other examples of genocide, the document goes on to say, are the Nazi genocidal policy, the Ukrainian pogrom of Jews in 1919, the Tutsi massacres of Hutu in Burundi in 1965 and 1972, the Paraguayan genocide of Ache Indians prior to 1974, and the Khymer Rouge genocide in Kampuchea between 1975 and 1978. It would seem pedantic to argue that some terrible mass killings are not legalistically genocide, and just a "tragedy."

At least 1 million, and well over half of the Armenian population are reliably estimated by independent authorities and eye witnesses to have been killed or death marched. This is corroborated by reports in the United States, German and British archives, and of contemporary diplomats in the Ottoman Empire, including those of its ally, Germany. Though the successor Turkish government helped to institute trials of a few of those responsible for the massacres at which they were found not guilty, the present — that is, 1985 — official Turkish contention is that genocide did not take place, although there were many casualties and dispersal in the fighting and that all evidence to the contrary is forged. Yet one must say that even in Turkey there is now some dissent from this official view.

The Belgian Senate passed an Armenian genocide resolution in 1998. The French Parliament did the same in January 2001, leading Turkey to cancel an array of contracts with French companies. In the U.S.A., the Armenian National Institute bought the old National Bank building two blocks from the

White House, with the aim of transforming it into a place that will preserve a memory.

The act of genocide is also supported by the Commission of the Churches on International Affairs of the World Council of Churches in 1984, a group that I chaired for some years. I met some of that committee when I was in Germany recently and we talked about this matter and they reaffirmed that position. They were also totally surprised that the authenticity of the historical genocidal event is still a matter of debate in Canada.

Let me say a word about my personal involvement in this issue. During 1980, when I was moderator of the United Church of Canada, many orphans of the 1950 genocide were brought to Canada under the care of my church, which safely stored their birth certificates for future use. They were called the Georgetown boys. In 1980, when they turned 65 and became eligible for Canadian pensions, I had the honour to give their own birth certificates back to them. I know some of these people and their history. I strongly support this motion and I hope the Senate does likewise.

On motion of Senator DeWare, for Senator Di Nino, debate adjourned.

The Senate adjourned until Wednesday, April 4, 2001, at 1:30 p.m.





## **APPENDIX**

Officers of the Senate

The Ministry

Senators

(Listed according to seniority, alphabetically and by provinces)

Committees of the Senate



**THE SPEAKER**

THE HONOURABLE DANIEL P. HAYS

**THE LEADER OF THE GOVERNMENT**

THE HONOURABLE SHARON CARSTAIRS, P.C.

**THE LEADER OF THE OPPOSITION**

THE HONOURABLE JOHN LYNCH-STAUNTON

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**OFFICERS OF THE SENATE****CLERK OF THE SENATE AND CLERK OF THE PARLIAMENTS**

PAUL BÉLISLE

**DEPUTY CLERK, PRINCIPAL CLERK, LEGISLATIVE SERVICES**

GARY O'BRIEN

**LAW CLERK AND PARLIAMENTARY COUNSEL**

MARK AUDCENT

**USHER OF THE BLACK ROD**

MARY McLAREN

# THE MINISTRY

According to Precedence

(April 3, 2001)

The Right Hon. Jean Chrétien	Prime Minister
The Hon. Herbert Eser Gray	Deputy Prime Minister
The Hon. David M. Collenette	Minister of Transport
The Hon. David Anderson	Minister of the Environment
The Hon. Ralph E. Goodale	Minister of Natural Resources and Minister responsible for the Canadian Wheat Board
The Hon. Brian Tobin	Minister of Industry
The Hon. Sheila Copps	Minister of Canadian Heritage
The Hon. John Manley	Minister of Foreign Affairs
The Hon. Paul Martin	Minister of Finance
The Hon. Arthur C. Eggleton	Minister of National Defence
The Hon. Anne McLellan	Minister of Justice and Attorney General of Canada
The Hon. Allan Rock	Minister of Health
The Hon. Lawrence MacAulay	Solicitor General of Canada
The Hon. Alfonso Gagliano	Minister of Public Works and Government Services
The Hon. Lucienne Robillard	President of the Treasury Board and Minister responsible for Infrastructure
The Hon. Martin Cauchon	Minister of National Revenue and Secretary of State (Economic Development Agency of Canada for the Regions of Quebec)
The Hon. Jane Stewart	Minister of Human Resources Development
The Hon. Stéphane Dion	President of the Queen's Privy Council for Canada and Minister of Intergovernmental Affairs
The Hon. Pierre Pettigrew	Minister of International Trade
The Hon. Don Boudria	Leader of the Government in the House of Commons
The Hon. Lyle Vancilief	Minister of Agriculture and Agri-Food
The Hon. Herb Dhaliwal	Minister of Fisheries and Oceans
The Hon. Ronald J. Duhamel	Minister of Veterans Affairs and Secretary of State (Western Economic Diversification) (Francophonie)
The Hon. Claudette Bradshaw	Minister of Labour
The Hon. Robert Daniel Nault	Minister of Indian Affairs and Northern Development
The Hon. Maria Minna	Minister for International Cooperation
The Hon. Elinor Caplan	Minister for Citizenship and Immigration
The Hon. Sharon Carstairs	Leader of the Government in the Senate
The Hon. Robert G. Thibault	Minister of State (Atlantic Canada Opportunities Agency)
The Hon. Ethel Blondin-Andrew	Secretary of State (Children and Youth)
The Hon. Hedy Fry	Secretary of State (Multiculturalism) (Status of Women)
The Hon. David Kilgour	Secretary of State (Latin America and Africa)
The Hon. James Scott Peterson	Secretary of State (International Financial Institutions)
The Hon. Andrew Mitchell	Secretary of State (Rural Development) (Federal Economic Development Initiative for Northern Ontario)
The Hon. Gilbert Normand	Secretary of State (Science, Research and Development)
The Hon. Denis Coderre	Secretary of State (Amateur Sport)
The Hon. Rey Pagtakhan	Secretary of State (Asia-Pacific)

## SENATORS OF CANADA

## ACCORDING TO SENIORITY

(April 3, 2001)

Senator	Designation	Post Office Address
THE HONOURABLE		
Herbert O. Sparrow	Saskatchewan	North Battleford, Sask.
Edward M. Lawson	Vancouver	Vancouver, B.C.
Bernard Alasdair Graham, P.C.	The Highlands	Sydney, N.S.
Jack Austin, P.C.	Vancouver South	Vancouver, B.C.
Willie Adams	Nunavut	Rankin Inlet, Nunavut
Lowell Murray, P.C.	Pakenham	Ottawa, Ont.
C. William Doody	Harbour Main-Bell Island	St. John's, Nfld.
Peter Alan Stollery	Bloor and Yonge	Toronto, Ont.
Peter Michael Pitfield, P.C.	Ottawa-Vanier	Ottawa, Ont.
E. Leo Kolber	Victoria	Westmount, Que.
Michael Kirby	South Shore	Halifax, N.S.
Jerahmiel S. Grafstein	Metro Toronto	Toronto, Ont.
Anne C. Cools	Toronto-Centre-York	Toronto, Ont.
Charlie Watt	Inkerman	Kuujuuaq, Que.
Daniel Phillip Hays, <i>Speaker</i>	Calgary	Calgary, Alta.
Joyce Fairbairn, P.C.	Lethbridge	Lethbridge, Alta.
Colin Kenny	Rideau	Ottawa, Ont.
Pierre De Bané, P.C.	De la Vallière	Montreal, Que.
Eymard Georges Corbin	Grand-Sault	Grand-Sault, N.B.
Brenda Mary Robertson	Riverview	Shediac, N.B.
Jean-Maurice Simard	Edmundston	Edmundston, N.B.
Norman K. Atkins	Markham	Toronto, Ont.
Ethel Cochrane	Newfoundland	Port-au-Port, Nfld.
Eileen Rossiter	Prince Edward Island	Charlottetown, P.E.I.
Mira Spivak	Manitoba	Winnipeg, Man.
Roch Bolduc	Gulf	Sainte-Foy, Que.
Gérald-A. Beaudoin	Rigaud	Hull, Que.
Pat Carney, P.C.	British Columbia	Vancouver, B.C.
Gerald J. Comeau	Nova Scotia	Church Point, N.S.
Consiglio Di Nino	Ontario	Downsview, Ont.
Donald H. Oliver	Nova Scotia	Halifax, N.S.
Noël A. Kinsella	Fredericton-York-Sunbury	Fredericton, N.B.
John Buchanan, P.C.	Nova Scotia	Halifax, N.S.
Mabel Margaret DeWare	Moncton	Moncton, N.B.
John Lynch-Staunton	Grandville	Georgeville, Que.
James Francis Kelleher, P.C.	Ontario	Sault Ste. Marie, Ont.
J. Trevor Eyton	Ontario	Caledon, Ont.
Wilbert Joseph Keon	Ottawa	Ottawa, Ont.
Michael Arthur Meighen	St. Marys	Toronto, Ont.
J. Michael Forrestall	Dartmouth and Eastern Shore	Dartmouth, N.S.
Janis G. Johnson	Winnipeg-Interlake	Winnipeg, Man.
A. Raynell Andreychuk	Regina	Regina, Sask.
Jean-Claude Rivest	Stadacona	Quebec, Que.
Terrance R. Stratton	Red River	St. Norbert, Man.
Marcel Prud'homme, P.C.	La Salle	Montreal, Que.
Leonard J. Gustafson	Saskatchewan	Macoun, Sask.
Erminie Joy Cohen	New Brunswick	Saint John, N.B.
David Tkachuk	Saskatchewan	Saskatoon, Sask.
W. David Angus	Alma	Montreal, Que.



## ACCORDING TO SENIORITY

Senator	Designation	Post Office Address
THE HONOURABLE		
Pierre Claude Nolin	De Salaberry	Quebec, Que.
Marjory LeBreton	Ontario	Manotick, Ont.
Gerry St. Germain, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.
Lise Bacon	De la Durantaye	Laval, Que.
Sharon Carstairs	Manitoba	Victoria Beach, Man.
Landon Pearson	Ontario	Ottawa, Ont.
Jean-Robert Gauthier	Ottawa-Vanier	Ottawa, Ontario
John G. Bryden	New Brunswick	Bayfield, N.B.
Rose-Marie Losier-Cool	Tracadie	Bathurst, N.B.
Céline Hervieux-Payette, P.C.	Bedford	Montreal, Que.
William H. Rompkey, P.C.	Labrador	North West River, Labrador, Nfld.
Lorna Milne	Peel County	Brampton, Ont.
Marie-P. Poulin	Nord de l'Ontario/Northern Ontario	Ottawa, Ont.
Shirley Maheu	Rougemont	Saint-Laurent, Que.
Nicholas William Taylor	Sturgeon	Bon Accord, Alta.
Léonce Mercier	Mille Isles	Saint-Élie d'Orford, Que.
Wilfred P. Moore	Stanhope St./Bluenose	Chester, N.S.
Lucie Pépin	Shawinigan	Montreal, Que.
Fernand Robichaud, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.
Catherine S. Callbeck	Prince Edward Island	Central Bedeque, P.E.I.
Marisa Ferretti Barth	Repentigny	Pierrefonds, Que.
Serge Joyal, P.C.	Kennebec	Montreal, Que.
Thelma J. Chalifoux	Alberta	Morinville, Alta.
Joan Cook	Newfoundland	St. John's, Nfld.
Ross Fitzpatrick	Okanagan-Similkameen	Kelowna, B.C.
The Very Reverend Dr. Lois M. Wilson	Toronto	Toronto, Ont.
Francis William Mahovlich	Toronto	Toronto, Ont.
Richard H. Kroft	Manitoba	Winnipeg, Man.
Douglas James Roche	Edmonton	Edmonton, Alta.
Joan Thorne Fraser	De Lorimier	Montreal, Que.
Aurélien Gill	Wellington	Mashteuiatsh, Pointe-Bleue, Que.
Vivienne Poy	Toronto	Toronto, Ont.
Sheila Finestone, P.C.	Montarville	Montreal, Que.
Ione Christensen	Yukon Territory	Whitehorse, Y.T.
George Furey	Newfoundland and Labrador	St. John's, Nfld.
Nick G. Sibbeston	Northwest Territories	Fort Simpson, N.W.T.
Isobel Finnerty	Ontario	Burlington, Ont.
John Wiebe	Saskatchewan	Swift Current, Sask.
Tommy Banks	Alberta	Edmonton, Alta.
Jane Marie Cordy	Nova Scotia	Dartmouth, N.S.
Raymond C. Setlakwe	The Laurentides	Thetford Mines, Que.

## SENATORS OF CANADA

## ALPHABETICAL LIST

(April 3, 2001)

Senator	Designation	Post Office Address	Political Affiliation
THE HONOURABLE			
Adams, Willie	Nunavut	Rankin Inlet, Nunavut	Lib
Andreychuk, A. Raynell	Regina	Regina, Sask.	PC
Angus, W. David	Alma	Montreal, Que.	PC
Atkins, Norman K.	Markham	Toronto, Ont.	PC
Austin, Jack, P.C.	Vancouver South	Vancouver, B.C.	Lib
Bacon, Lise	De la Durantaye	Laval, Que.	Lib
Banks, Tommy	Alberta	Edmonton, Alta.	Lib
Beaudoin, Gérald-A.	Rigaud	Hull, Que.	PC
Bolduc, Roch	Gulf	Sainte-Foy, Que.	PC
Bryden, John G.	New Brunswick	Bayfield, N.B.	Lib
Buchanan, John, P.C.	Halifax	Halifax, N.S.	PC
Callbeck, Catherine S.	Prince Edward Island	Central Bedeque, P.E.I.	Lib
Carney, Pat, P.C.	British Columbia	Vancouver, B.C.	PC
Carstairs, Sharon	Manitoba	Victoria Beach, Man.	Lib
Chalifoux, Thelma J.	Alberta	Morinville, Alta.	Lib
Christensen, Ione	Yukon Territory	Whitehorse, Y.T.	Lib
Cochrane, Ethel	Newfoundland	Port-au-Port, Nfld.	PC
Cohen, Erminie Joy	New Brunswick	Saint John, N.B.	PC
Comeau, Gerald J.	Nova Scotia	Church Point, N.S.	PC
Cook, Joan	Newfoundland	St. John's, Nfld.	Lib
Cools, Anne C.	Toronto-Centre-York	Toronto, Ont.	Lib
Corbin, Eymard Georges	Grand-Sault	Grand-Sault, N.B.	Lib
Cordy, Jane Marie	Nova Scotia	Dartmouth, N.S.	Lib
De Bané, Pierre, P.C.	De la Vallière	Montreal, Que.	Lib
DeWare, Mabel Margaret	Moncton	Moncton, N.B.	PC
Di Nino, Consiglio	Ontario	Downsview, Ont.	PC
Doody, C. William	Harbour Main-Bell Island	St. John's, Nfld.	PC
Eyton, J. Trevor	Ontario	Caledon, Ont.	PC
Fairbairn, Joyce, P.C.	Lethbridge	Lethbridge, Alta.	Lib
Ferretti Barth, Marisa	Repentigny	Pierrefonds, Que.	Lib
Finestone, Sheila, P.C.	Montarville	Montreal, Que.	Lib
Finnerty, Isobel	Ontario	Burlington, Ont.	Lib
Fitzpatrick, Ross	Okanagan-Similkameen	Kelowna, B.C.	Lib
Forrestall, J. Michael	Dartmouth and the Eastern Shore	Dartmouth, N.S.	PC
Fraser, Joan Thorne	De Lorimier	Montreal, Que.	Lib
Furey, George	Newfoundland and Labrador	St. John's, Nfld.	Lib
Gauthier, Jean-Robert	Ottawa-Vanier	Ottawa, Ont.	Lib
Gill, Aurélien	Wellington	Mashteuiatsh, Pointe-Bleue, Que.	Lib
Grafstein, Jerahmiel S.	Metro Toronto	Toronto, Ont.	Lib
Graham, Bernard Alasdair, P.C.	The Highlands	Sydney, N.S.	Lib
Gustafson Leonard J.	Saskatchewan	Macoun, Sask.	PC
Hays, Daniel Phillip, <i>Speaker</i>	Calgary	Calgary, Alta.	Lib
Hervieux-Payette, Céline, P.C.	Bedford	Montreal, Que.	Lib
Johnson, Janis G.	Winnipeg-Interlake	Winnipeg, Man.	PC
Joyal, Serge, P.C.	Kennebec	Montreal, Que.	Lib
Kelleher, James Francis, P.C.	Ontario	Sault Ste. Marie, Ont.	PC
Kenny, Colin	Rideau	Ottawa, Ont.	Lib
Keon, Wilbert Joseph	Ottawa	Ottawa, Ont.	PC
Kinsella, Noël A.	Fredericton-York-Sunbury	Fredericton, N.B.	PC
Kirby, Michael	South Shore	Halifax, N.S.	Lib

## SENATORS OF CANADA

Senator	Designation	Post Office Address	Political Affiliation
THE HONOURABLE			
Kolber, E. Leo	Victoria	Westmount, Que.	Lib
Kroft, Richard H.	Manitoba	Winnipeg, Man.	Lib
Lawson, Edward M.	Vancouver	Vancouver, B.C.	Ind
LeBreton, Marjory	Ontario	Manotick, Ont.	PC
Losier-Cool, Rose-Marie	Tracadie	Bathurst, N.B.	Lib
Lynch-Staunton, John	Grandville	Georgeville, Que.	PC
Maheu, Shirley	Rougemont	Saint-Laurent, Que.	Lib
Mahovlich, Francis William	Toronto	Toronto, Ont.	Lib
Meighen, Michael Arthur	St. Marys	Toronto, Ont.	PC
Mercier, Léonce	Mille Isles	Saint-Élie d'Orford, Que.	Lib
Milne, Lorna	Peel County	Brampton, Ont.	Lib
Moore, Wilfred P.	Stanhope St./Bluenose	Chester, N.S.	Lib
Murray, Lowell, P.C.	Pakenham	Ottawa, Ont.	PC
Nolin, Pierre Claude	De Salaberry	Quebec, Que.	PC
Oliver, Donald H.	Nova Scotia	Halifax, N.S.	PC
Pearson, Landon	Ontario	Ottawa, Ontario	Lib
Pépin, Lucie	Shawinigan	Montreal, Que.	Lib
Pitfield, Peter Michael, P.C.	Ottawa-Vanier	Ottawa, Ont.	Ind
Poulin, Marie-P.	Nord de l'Ontario/Northern Ontario	Ottawa, Ont.	Lib
Poy, Vivienne	Toronto	Toronto, Ont.	Lib
Prud'homme, Marcel, P.C.	La Salle	Montreal, Que.	Ind
Rivest, Jean-Claude	Stadacona	Quebec, Que.	PC
Robertson, Brenda Mary	Riverview	Shediac, N.B.	PC
Robichaud, Fernand, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.	Lib
Roche, Douglas James.	Edmonton	Edmonton, Alta.	Ind
Rompkey, William H., P.C.	Labrador	North West River, Labrador, Nfld.	Lib
Rossiter, Eileen	Prince Edward Island	Charlottetown, P.E.I.	PC
St. Germain, Gerry, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.	CA
Setlakwe, Raymond C.	The Laurentides	Thetford Mines, Que.	Lib
Sibbeston, Nick G.	Northwest Territories	Fort Simpson, N.W.T.	Lib
Simard, Jean-Maurice	Edmundston	Edmundston, N.B.	PC
Sparrow, Herbert O.	Saskatchewan	North Battleford, Sask.	Lib
Spivak, Mira	Manitoba	Winnipeg, Man.	PC
Stollery, Peter Alan	Bloor and Yonge	Toronto, Ont.	Lib
Stratton, Terrance R.	Red River	St. Norbert, Man.	PC
Taylor, Nicholas William	Sturgeon	Bon Accord, Alta.	Lib
Tkachuk, David	Saskatchewan	Saskatoon, Sask.	PC
Watt, Charlie	Inkerman	Kuujuuaq, Que.	Lib
Wiebe, John	Saskatchewan	Swift Current, Sask.	Lib
Wilson, The Very Reverend Dr. Lois M.	Toronto	Toronto, Ont.	Ind



# SENATORS OF CANADA

## BY PROVINCE AND TERRITORY

(April 3, 2001)

### ONTARIO—24

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Lowell Murray, P.C.	Pakenham	Ottawa
2 Peter Alan Stollery	Bloor and Yonge	Toronto
3 Peter Michael Pitfield, P.C.	Ottawa-Vanier	Ottawa
4 Jeremiah S. Grafstein	Metro Toronto	Toronto
5 Anne C. Cools	Toronto-Centre-York	Toronto
6 Colin Kenny	Rideau	Ottawa
7 Norman K. Atkins	Markham	Toronto
8 Consiglio Di Nino	Ontario	Downsview
9 James Francis Kelleher, P.C.	Ontario	Sault Ste. Marie
10 John Trevor Eyton	Ontario	Caledon
11 Wilbert Joseph Keon	Ottawa	Ottawa
12 Michael Arthur Meighen	St. Marys	Toronto
13 Marjory LeBreton	Ontario	Manotick
14 Landon Pearson	Ontario	Ottawa
15 Jean-Robert Gauthier	Ottawa-Vanier	Ottawa
16 Lorna Milne	Peel County	Brampton
17 Marie-P. Poulin	Northern Ontario	Ottawa
18 The Very Reverend Dr. Lois M. Wilson	Toronto	Toronto
19 Francis William Mahovlich	Toronto	Toronto
20 Vivienne Poy	Toronto	Toronto
21 Isobel Finnerty	Ontario	Burlington
22		
23		
24		

## SENATORS BY PROVINCE AND TERRITORY

## QUEBEC—24

Senator	Designation	Post Office Address
THE HONOURABLE		
1 E. Leo Kolber	Victoria	Westmount
2 Charlie Watt	Inkerman	Kuuujuaq
3 Pierre De Bané, P.C.	De la Vallière	Montreal
4 Roch Bolduc	Gulf	Sainte-Foy
5 Gérald-A. Beaudoin	Rigaud	Hull
6 John Lynch-Staunton	Grandville	Georgeville
7 Jean-Claude Rivest	Stadacona	Quebec
8 Marcel Prud'homme, P.C.	La Salle	Montreal
9 W. David Angus	Alma	Montreal
10 Pierre Claude Nolin	De Salaberry	Quebec
11 Lise Bacon	De la Durantaye	Laval
12 Céline Hervieux-Payette, P.C.	Bedford	Montreal
13 Shirley Maheu	Rougemont	Ville de Saint-Laurent
14 Léonce Mercier	Mille Isles	Saint-Élie d'Orford
15 Lucie Pépin	Shawinigan	Montreal
16 Marisa Ferretti Barth	Repentigny	Pierrefonds
17 Serge Joyal, P.C.	Kennebec	Montreal
18 Joan Thorne Fraser	De Lorimier	Montreal
19 Aurélien Gill	Wellington	Mashteuiatsh, Pointe-Bleue
20 Sheila Finestone, P.C.	Montarville	Montreal
21 Raymond C. Setlakwe	The Laurentides	Thetford Mines
22		
23		
24		

## SENATORS BY PROVINCE—MARITIME DIVISION

## NOVA SCOTIA—10

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Bernard Alasdair Graham, P.C.	The Highlands	Sydney
2 Michael Kirby	South Shore	Halifax
3 Gerald J. Comeau	Nova Scotia	Church Point
4 Donald H. Oliver	Nova Scotia	Halifax
5 John Buchanan, P.C.	Halifax	Halifax
6 J. Michael Forrestall	Dartmouth and Eastern Shore	Dartmouth
7 Wilfred P. Moore	Stanhope St./Bluenose	Chester
8 Jane Marie Cordy	Nova Scotia	Dartmouth
9		
10		

## NEW BRUNSWICK—10

THE HONOURABLE		
1 Eymard Georges Corbin	Grand-Sault	Grand-Sault
2 Brenda Mary Robertson	Riverview	Shediac
3 Jean-Maurice Simard	Edmundston	Edmundston
4 Noël A. Kinsella	Fredericton-York-Sunbury	Fredericton
5 Mabel Margaret DeWare	Moncton	Moncton
6 Erminie Joy Cohen	New Brunswick	Saint John
7 John G. Bryden	New Brunswick	Bayfield
8 Rose-Marie Losier-Cool	Tracadie	Bathurst
9 Fernand Robichaud, P.C.	Saint-Louis-de-Kent	Saint-Louis-de-Kent
10		

## PRINCE EDWARD ISLAND—4

THE HONOURABLE		
1 Eileen Rossiter	Prince Edward Island	Charlottetown
2 Catherine S. Callbeck	Prince Edward Island	Central Bedeque
3		
4		



SENATORS BY PROVINCE—WESTERN DIVISION

MANITOBA—6

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Mira Spivak .....	Manitoba .....	Winnipeg
2 Janis G. Johnson .....	Winnipeg-Interlake .....	Winnipeg
3 Terrance R. Stratton .....	Red River .....	St. Norbert
4 Sharon Carstairs, P.C. ....	Manitoba .....	Victoria Beach
5 Richard H. Kroft .....	Manitoba .....	Winnipeg
6 .....		

BRITISH COLUMBIA—6

THE HONOURABLE		
1 Edward M. Lawson .....	Vancouver .....	Vancouver
2 Jack Austin, P.C. ....	Vancouver South .....	Vancouver
3 Pat Carney, P.C. ....	British Columbia .....	Vancouver
4 Gerry St. Germain, P.C. ....	Langley-Pemberton-Whistler ..	Maple Ridge
5 Ross Fitzpatrick .....	Okanagan-Similkameen .....	Kelowna
6 .....		

SASKATCHEWAN—6

THE HONOURABLE		
1 Herbert O. Sparrow .....	Saskatchewan .....	North Battleford
2 A. Raynell Andreychuk .....	Regina .....	Regina
3 Leonard J. Gustafson .....	Saskatchewan .....	Macoun
4 David Tkachuk .....	Saskatchewan .....	Saskatoon
5 John Wiebe .....	Saskatchewan .....	Swift Current
6 .....		

ALBERTA—6

THE HONOURABLE		
1 Daniel Phillip Hays, <i>Speaker</i> .....	Calgary .....	Calgary
2 Joyce Fairbairn, P.C. ....	Lethbridge .....	Lethbridge
3 Nicholas William Taylor .....	Sturgeon .....	Bon Accord
4 Thelma J. Chalifoux .....	Alberta .....	Morinville
5 Douglas James Roche .....	Edmonton .....	Edmonton
6 Tommy Banks .....	Alberta .....	Edmonton

## SENATORS BY PROVINCE AND TERRITORY

## NEWFOUNDLAND—6

Senator	Designation	Post Office Address
THE HONOURABLE		
1 C. William Doody .....	Harbour Main-Bell Island ....	St. John's
2 Ethel Cochrane .....	Newfoundland .....	Port-au-Port
3 William H. Rompkey, P.C. ....	Labrador .....	North West River, Labrador
4 Joan Cook .....	Newfoundland .....	St. John's
5 George Furey .....	Newfoundland and Labrador ..	St. John's
6 .....		

## NORTHWEST TERRITORIES—1

THE HONOURABLE		
1 Nick G. Sibbeston .....	Northwest Territories .....	Fort Simpson

## NUNAVUT—1

THE HONOURABLE		
1 Willie Adams .....	Nunavut .....	Rankin Inlet

## YUKON TERRITORY—1

THE HONOURABLE		
1 Ione Christensen .....	Yukon Territory .....	Whitehorse

# ALPHABETICAL LIST OF STANDING, SPECIAL AND JOINT COMMITTEES

(As of April 3, 2001)

\*Ex Officio Member

## ABORIGINAL PEOPLES

**Chair:** Honourable Senator Chalifoux

**Deputy Chair:** Honourable Senator Johnson

**Honourable Senators:**

Carney	Christensen,	Johnson,	Rompkey,
*Carstairs (or Robichaud)	Cochrane,	*Lynch-Staunton, (or Kinsella)	Sibbeston,
Chalifoux,	Gill,	Pearson,	Tkachuk,
	Hubley,		Wilson.

### *Original Members as nominated by the Committee of Selection*

*Carney, \*Carstairs (or Robichaud), Chalifoux, Christensen, Cochrane, Cordy, Gill, Johnson, \*Lynch-Staunton (or Kinsella), Pearson, Rompkey, Sibbeston, Tkachuk, Wilson.*

## SUBCOMMITTEE ON ABORIGINAL ECONOMIC DEVELOPMENT IN RELATIONS TO NORTHERN NATIONAL PARKS

**Chair:** Honourable Senator Christensen

**Deputy Chair:** Honourable Senator Cochrane

**Honourable Senators:**

*Carstairs (or Robichaud)	Christensen,	Johnson,	Sibbeston.
Chalifoux,	Cochrane,	*Lynch-Staunton, (or Kinsella)	

## AGRICULTURE AND FORESTRY

**Chair:** Honourable Senator Gustafson

**Deputy Chair:** Honourable Senator Wiebe

**Honourable Senators:**

*Carstairs (or Robichaud)	Fitzpatrick,	*Lynch-Staunton, (or Kinsella)	Stratton,
Chalifoux,	Gill,	Milne,	Taylor,
Fairbairn,	Gustafson,	Oliver,	Tkachuk,
	LeBreton,		Wiebe.

### *Original Members as nominated by the Committee of Selection*

*\*Carstairs (or Robichaud), Chalifoux, Fairbairn, Fitzpatrick, Gill, Gustafson, LeBreton, \*Lynch-Staunton (or Kinsella), Milne, Oliver, Stratton, Taylor, Tkachuk, Wiebe.*



**BANKING, TRADE AND COMMERCE**

<b>Chair:</b>	<b>Honourable Senator Kolber</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Tkachuk</b>
<b>Honourable Senators:</b>			
Angus,	Hervieux-Payette,	*Lynch-Staunton,	Oliver,
		(or Kinsella)	
*Carstairs	Kelleher,		Poulin,
(or Robichaud)	Kolber,	Meighen,	Setlakwe,
Furey,	Kroft,		Wiebe.

*Original Members as nominated by the Committee of Selection*

Angus, \*Carstairs (or Robichaud), Furey, Hervieux-Payette, Kelleher, Kolber, Kroft,  
 \*Lynch-Staunton (or Kinsella), Meighen, Oliver, Poulin, Setklawe, Tkachuk., Wiebe.

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**ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES**

<b>Chair:</b>	<b>Honourable Senator Taylor</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Spivak</b>
<b>Honourable Senators:</b>			
Adams,	Christensen,	Kelleher,	Spivak,
Banks,	Cochrane,	Kenny,	Taylor.
Buchanan,	Eyton,	*Lynch-Staunton,	
		(or Kinsella)	
*Carstairs	Finnerty,	Sibbeston,	
(or Robichaud)			

*Original Members as nominated by the Committee of Selection*

Banks, Buchanan, \*Carstairs (or Robichaud), Christensen, Cochrane, Eyton, Finnerty,  
 Kelleher, Kenny, \*Lynch-Staunton (or Kinsella), Sibbeston, Spivak, Taylor, Watt.

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**FISHERIES**

<b>Chair:</b>	<b>Honourable Senator Comeau</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Cook</b>
<b>Honourable Senators:</b>			
Adams,	Carney,	Corbin,	Mahovlich,
Callbeck,	Chalifoux,	Johnson,	Moore,
*Carstairs	Comeau,	Kenny,	Robertson.
(or Robichaud)	Cook,	*Lynch-Staunton,	
		(or Kinsella)	

*Original Members as nominated by the Committee of Selection*

Adams, Callbeck, \*Carstairs (or Robichaud), Carney, Chalifoux, Comeau, Cook,  
 \*Lynch-Staunton (or Kinsella), Mahovlich, Meighen, Molgat, Moore, Robertson, Watt.

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## FOREIGN AFFAIRS

<b>Chair:</b>	<b>Honourable Senator Stollery</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Andreychuk</b>
<b>Honourable Senators:</b>			
Andreychuk,	*Carstairs	Di Nino,	*Lynch-Staunton,
Austin,	(or Robichaud)	Grafstein,	(or Kinsella)
Bolduc,	Corbin,	Graham,	Poulin,,
Carney,	De Bané,	Losier-Cool,	Stollery.

*Original Members as nominated by the Committee of Selection*

*Andreychuk, Austin, Bolduc, Carney, \*Carstairs (or Robichaud), Corbin, De Bané, Di Nino, Grafstein, Graham, Losier-Cool, \*Lynch-Staunton (or Kinsella), Poulin, Stollery.*

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

<b>Chair:</b>	<b>Honourable Senator Kroft</b>	<b>Deputy Chair:</b>	<b>Honourable Senator DeWare</b>
<b>Honourable Senators:</b>			
Austin,	DeWare,	Kenny,	Milne,
*Carstairs	Doody,	Kroft,	Murray,
(or Robichaud)	Forrestall,	*Lynch-Staunton,	Poulin,
Comeau,	Furey,	(or Kinsella)	Stollery.
De Bané,	Gauthier,	Maheu,	

*Original Members as nominated by the Committee of Selection*

*Austin, \*Carstairs (or Robichaud), Comeau, De Bané, DeWare, Doody, Forrestall, Furey, Gauthier, Kenny, Kroft, \*Lynch-Staunton (or Kinsella), Maheu, Milne, Murray, Poulin, Stollery.*

## LEGAL AND CONSTITUTIONAL AFFAIRS

<b>Chair:</b>	<b>Honourable Senator Milne</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Beaudoin</b>
<b>Honourable Senators:</b>			
Andreychuk,	Buchanan,	Grafstein,	Milne,
Atkins,	*Carstairs	Gustafson,	Moore,
Banks,	(or Robichaud)	Joyal,	Pearson.
Beaudoin,	Cools,	*Lynch-Staunton,	
		(or Kinsella)	

*Original Members as nominated by the Committee of Selection*

*Andreychuk, Atkins, Beaudoin, Buchanan, \*Carstairs (or Robichaud), Cools, Fraser, Grafstein, Joyal, \*Lynch-Staunton (or Kinsella), Milne, Moore, Nolin, Pearson.*

## LIBRARY OF PARLIAMENT (Joint)

Chair: Honourable Senator Bryden

Deputy Chair:

Honourable Senators:

Beaudoin,

Cordy,

Oliver,

Poy.

Bryden,

*Original Members agreed to by Motion of the Senate**Beaudoin, Bryden, Cordy, Oliver, Poy.*

## NATIONAL FINANCE

Chair: Honourable Senator Murray

Deputy Chair: Honourable Senator Finnerty

Honourable Senators:

Banks,

Cohen,

Kinsella,

Murray,

Bolduc,

Cools,

\*Lynch-Staunton,

Stratton,

\*Carstairs

Ferretti Barth,

(or Kinsella)

Tunney.

(or Robichaud)

Finnerty,

Mahovlich,

*Original Members as nominated by the Committee of Selection**Banks, Bolduc, \*Carstairs (or Robichaud), Cools, Doody, Finnerty, Ferretti Barth, Hervieux-Payette, Kinsella, Kirby, \*Lynch-Staunton (or Kinsella), Mahovlich, Murray, Stratton.*

## OFFICIAL LANGUAGES (Joint)

Chair: Honourable Senator Maheu

Deputy Chair:

Honourable Senators:

Bacon,

De Bané,

Losier-Cool,

Rivest,

Beaudoin,

Gauthier,

Maheu,

Setlakwe,

Simard.

*Original Members agreed to by Motion of the Senate**Bacon, Beaudoin, Fraser, Gauthier, Losier-Cool, Maheu, Rivest, Setlakwe, Simard.*



# PRIVILEGES, STANDING RULES AND ORDERS

**Chair:** Honourable Senator Austin

**Deputy Chair:** Honourable Senator Stratton

**Honourable Senators:**

Andreychuk,	Corbin,
Austin,	DeWare,
Bryden,	Di Nino,
*Carstairs (or Robichaud)	Gauthier,
	Grafstein,

Joyal,	Murray,
Kroft,	Poulin,
Losier-Cool,	Rossiter,
*Lynch-Staunton, (or Kinsella)	Stratton,

## *Original Members as nominated by the Committee of Selection*

*Andreychuk, Austin, Bryden, \*Carstairs (or Robichaud), DeWare, Di Nino, Gauthier, Grafstein, Hervieux-Payette, Joyal, Kroft, Losier-Cool, \*Lynch-Staunton (or Kinsella), Murray, Poulin, Rossier, Stratton.*

---

# SCRUTINY OF REGULATIONS (Joint)

**Chair:** Honourable Senator Hervieux-Payette

**Deputy Chair:**

**Honourable Senators:**

Banks	Hervieux-Payette
Bryden,	

Kinsella,	Nolin.
Moore,	

## *Original Members agreed to by Motion of the Senate*

*Bacon, Bryden, Finestone, Hervieux-Payette, Kinsella, Moore, Nolin.*

---

# SELECTION

**Chair:** Honourable Senator Mercier

**Deputy Chair:**

**Honourable Senators:**

Austin,	DeWare,
*Carstairs (or Robichaud)	Fairbairn,
Corbin,	Graham,

Kinsella,	Mercier,
LeBreton,	Robertson.
*Lynch-Staunton, (or Kinsella)	

## *Original Members agreed to by Motion of the Senate*

*Austin, \*Carstairs (or Robichaud), Corbin, DeWare, Fairbairn, Graham, Kinsella, LeBreton, \*Lynch-Staunton (or Kinsella), Mercier, Murray.*

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### SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

<b>Chair:</b>	<b>Honourable Senator Kirby</b>	<b>Deputy Chair:</b>	<b>Honourable Senator LeBreton</b>
<b>Honourable Senators:</b>			
Callbeck,	Cook,	Kirby,	Pépin,
*Carstairs	Cordy,	LeBreton,	Roberston,
(or Robichaud)	Fairbairn,	*Lynch-Staunton,	Roche.
Cohen,	Graham,	(or Kinsella)	

*Original Members as nominated by the Committee of Selection*

Callbeck, \*Carstairs (or Robichaud), Cohen, Cook, Cordy, Fairbairn, Graham, Johnson, Kirby, LeBreton, \*Lynch-Staunton (or Kinsella), Pépin, Robertson, Roche.

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### TRANSPORT AND COMMUNICATIONS

<b>Chair:</b>	<b>Honourable Senator Bacon</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Forrestall</b>
<b>Honourable Senators:</b>			
Adams,	*Carstairs	Fitzpatrick,	Morin,
Bacon,	(or Robichaud)	Forrestall,	Rompkey,
Callbeck,	Eyton,	*Lynch-Staunton,	Setlakwe,
	Finestone,	(or Kinsella)	Spivak.

*Original Members as nominated by the Committee of Selection*

Adams, Angus, Bacon, Callbeck, \*Carstairs (or Robichaud), Christensen, Eyton, Finestone, Fitzpatrick, Forrestall, \*Lynch-Staunton (or Kinsella), Rompkey, Setlakwe, Spivak.

---

### THE SPECIAL SENATE COMMITTEE ON ILLEGAL DRUGS

<b>Chair:</b>	<b>Honourable Senator Nolin</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Kenny</b>
<b>Honourable Senators:</b>			
Banks,	Kenny,	*Lynch-Staunton,	Nolin,
*Carstairs		(or Kinsella)	Rossiter.
(or Robichaud)		Maheu,	

*Original Members as agreed to by Motion of the Senate*

Banks, \*Carstairs (or Robichaud), Kenny, \*Lynch-Staunton (or Kinsella), Maheu, Nolin, Rossiter.

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CANADA

# Debates of the Senate

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1st SESSION

• 37th PARLIAMENT

• VOLUME 139

• NUMBER 25

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OFFICIAL REPORT  
(HANSARD)

Wednesday, April 4, 2001

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THE HONOURABLE DAN HAYS  
SPEAKER

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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Wednesday, April 4, 2001

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### INTERNATIONAL TRADE

##### UNITED STATES—RENEWAL OF SOFTWOOD LUMBER AGREEMENT

**Hon. Ross Fitzpatrick:** Honourable senators, I wish to complete my statement of yesterday on the softwood lumber issue with the United States.

First, I feel it is appropriate to reiterate that I am pleased to see the Minister of International Trade respond forcefully in defending the interests of our softwood lumber industry, and aggressively fighting for free trade against unfounded allegations by the U.S. lumber coalition.

Further, I am pleased to emphasize that this government is continuing to consult industry and all provincial governments in defending the interests of Canada's softwood lumber industry for the whole country. It is of paramount importance that all regions of Canada unite behind the government in what is to be one of the most serious trade disputes this country has ever faced.

##### UNITED STATES—PROTECTIONIST MEASURES TOWARD PRINCE EDWARD ISLAND POTATOES

**Hon. Catherine S. Callbeck:** Honourable senators, I have in my hand a resolution, dated March 30, that was carried unanimously by the Legislative Assembly of Prince Edward Island. It addresses the ongoing problem of United States' trade protectionism and that country's refusal to allow tested and cleared Prince Edward Island potatoes across the border.

Honourable senators, we are all aware of the history behind the situation. A few potatoes affected by potato wart were discovered in one small sector of one potato field on October 20, 2000. As a result of this discovery, the United States Department of Agriculture closed the border to shipments of Prince Edward Island potatoes on October 31, over five months ago.

Close to 10 per cent of the total Prince Edward Island crop is normally shipped to the United States. The border closure has caused millions of potatoes to be squandered, either rotting in warehouses or spread for fertilizer, and has hampered efforts to ship potatoes to other markets. The potato industry has suffered a \$50-million loss and the overall Island economy has been

severely impacted. Compounding the problem is the current dilemma faced by potato growers as to whether or not to put in a crop in the coming season, which traditionally starts in mid- to late April.

Honourable senators, there is no point in many of the farmers investing in a new crop when much of their old crop is rotting in the warehouse. This resolution accurately states the importance of the potato to my home province. The agricultural industry is the single biggest economic generator in Prince Edward Island. The potato sector generates more revenue than any other agricultural component of the province's economy.

Obviously, I am concerned about these facts. The United States has maintained its heavy-handed border control despite overwhelming scientific evidence suggesting that the potato wart is isolated to one small area of one potato field. To date, the federal government has had limited success in opening up the border. Therefore, this resolution urges the federal government to increase its efforts to resolve the unjustifiably prolonged closure of the U.S. border to Prince Edward Island potatoes.

Honourable senators, I now ask leave to table this important, unanimous resolution by the Legislative Assembly of Prince Edward Island.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

### YUKON

##### WHITEHORSE—OPENING OF NEW FRANCOPHONE COMMUNITY CENTRE

**Hon. Ione J. Christensen:** Honourable senators, this past Friday, I had the pleasure of participating in the opening of a new francophone community centre in Whitehorse, Yukon. The francophone community in the Yukon has been working on this project for the past 15 years and it was indeed a day of celebration. Whitehorse is the only French-speaking community outside of the province of Quebec that has grown in size. The total number of Yukoners who speak French has doubled in the past 20 years.

The new centre will provide space for the newspaper *L'Aurore boréale*; the women's group *les Essentielles*; *Espoir Jeunesse*, the youth group; *Évasion Nordik*, a tour operator; APEF, the association of francophone parents; AFY, the Association franco-yukonnaise; and SOFA, an adult orientation and training service. In addition, the francophone community has l'école Émilie-Tremblay, which offers grades K to 12.

We are proud of our French-speaking community in the Yukon and the cultural diversity that it offers all Yukoners. My heartiest congratulations to them on this accomplishment.

[Translation]

## ROUTINE PROCEEDINGS

### ADJOURNMENT

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Thursday, April 5, 2001, at 1:30 p.m.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

Motion agreed to.

[English]

• (1340)

## QUESTION PERIOD

### INTERNATIONAL TRADE

#### WORLD TRADE ORGANIZATION—WIN/LOSS RECORD OF GOVERNMENT IN DISPUTES

**Hon. James F. Kelleher:** Honourable senators, my question is directed to the Leader of the Government in the Senate. As honourable senators are well aware, the federal government has recently lost six World Trade Organization cases regarding the stockpiling of pharmaceutical products, split-run periodicals, Canada's term of patent protection, dairy supply management, asbestos and the Auto Pact. We also know that the Canada-United States Softwood Lumber Agreement expired on March 31, and already many of the provinces are concerned about how the federal government is managing this dispute.

The *National Post* has reported that federal trade lawyers say their advice is routinely ignored in favour of political considerations when Canada decides what cases to take before international bodies. The *National Post* quoted a senior official in the Trade Law Division of the Department of Foreign Affairs and International Trade who said:

Having a friend in the Prime Minister's Office is far more important than having a good legal case.

As a former Minister of International Trade I am concerned that this string of losses is causing Canada to lose credibility with our trading partners and forcing the Canadian public to lose faith in trade negotiations, including the upcoming Free Trade Area of the Americas meetings in Quebec City.

I believe it was on September 19, 2000 that I asked the former Leader of the Government in the Senate to table a full report on all cases Canada has launched and defended since the WTO treaties came into force in 1995. Over six months later, we still have no response.

Will the leader therefore table in the Senate a full report on all the cases Canada has launched and defended since the WTO treaties came into force in 1995 so that the Canadian public can assess this government's win-loss record?

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his question. I am surprised, however, that he makes reference to the string of losses and then immediately moves into the subject of softwood lumber, because in terms of softwood lumber we have won, won, won. The United States, because of its own particular agenda, has chosen to continue to challenge what the trade tribunals have said are perfectly reasonable and acceptable practices in Canada.

The honourable senator requests a full report. I was unaware of the senator's former request. I was a bit surprised, when as the new Leader of the Government in the Senate, I asked for the briefing books of the previous government leader, only to be told that I could not have access to them because they were not my briefing books. However, now that the senator has made that request of me, I will do everything I can to obtain a full report for him.

**Senator Kelleher:** Honourable senators, with respect to the leader's comments on recent victories in the softwood lumber dispute, the agreement has come to an end and cases have now been filed by the United States against Canada. Therefore, I do not think those victories were of much benefit to us.

#### UNITED STATES—RENEWAL OF SOFTWOOD LUMBER AGREEMENT—EXPORT TAX

**Hon. James F. Kelleher:** Honourable senators, as I just said, the Canada-United States Softwood Lumber Agreement expired on March 31, and already Canadians, including the premiers of the Atlantic provinces, are concerned about how the federal government is managing this dispute.

On March 29, the Minister of International Trade, Pierre Pettigrew, announced that Canada would monitor softwood lumber exports to the United States by requiring all exporters to obtain a permit under the Export and Import Permits Act.

Will the Leader of the Government in the Senate advise whether this is the first step toward imposing another export tax on Canada's softwood lumber exports to the United States?



**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I will be very clear. There was a specific reason for Mr. Pettigrew acting the way in which he did, and that was to ensure that false information could not be laid at the feet of the Canadian government with the Americans trying to prove a case. By keeping export permits and detailed records, the Canadian government has clear knowledge. Therefore, should the United States choose to put false information on the record, we will know that it is indeed false. That was the reason for putting the export permit in place.

As to the pyrrhic victories, the victory was clear. It is pyrrhic only in that, unfortunately, the Americans did not recognize it.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, on a supplementary question, is the government considering an export tax?

**Senators Carstairs:** I thank the honourable Leader of the Opposition for that question. It has been clearly indicated by the minister responsible for softwood lumber that that is not under consideration.

UNITED STATES—RENEWAL OF SOFTWOOD LUMBER  
AGREEMENT—EXPORT/IMPORT OF LOGS

**Hon. Gerry St. Germain:** Honourable senators, my question is directed to the Leader of the Government in the Senate. Was the honourable leader able to get a response to my query of yesterday about the export of logs from Canada to the U.S. and from the U.S. to Canada?

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his follow-up to yesterday's question. No, between 2:15 yesterday and 1:50 today I have not been able to get that answer, but I am working on it.

PRIME MINISTER'S OFFICE

DUTIES OF MR. DAVID MILLER AS SENIOR ADVISOR—  
INVOLVEMENT IN MARITIME HELICOPTER PROJECT

**Hon. Michael J. Forrestall:** Honourable senators, my question is directed to the Leader of the Government in the Senate. Yesterday, the Prime Minister stated that Mr. David Miller would absent himself from discussions about the Maritime Helicopter Project — and this is very important — once bids were received. Does this mean that Mr. Miller is free to discuss the Sea King replacement until such time as bids for its replacement are received?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I certainly do not interpret the Prime Minister's answer in that way. As I indicated yesterday, David Miller has signed a conflict of interest document. He has met with the Ethics Counsellor. I have faith in his integrity. I do not think he will engage in any step with respect to the Maritime Helicopter Project.

**Senator Forrestall:** Honourable senators, the Ethics Counsellor, Mr. Wilson, was quoted in a Canadian Press report last Friday evening as stating:

We would require that the person not become involved in any file on which they had been making representations.

• (1350)

Clearly, the Ethics Counsellor has a different view from that of the Prime Minister. Will Mr. Miller absent himself from these discussions in their entirety with the Prime Minister, the Deputy Prime Minister and cabinet, or will government find itself in direct violation of its own Ethics Counsellor's guidelines?

**Senator Carstairs:** Honourable senators, I thought I answered that question in response to the honourable senator's first question. Mr. Miller will not involve himself in the discussion of the Maritime Helicopter Project in any of its various stages. That means now, in the short term and in the long term. It means he will not engage himself in such discussions.

**Senator Forrestall:** Then I assume that that involves any discussions he might have outside working hours with former colleagues.

DUTIES OF MR. DAVID MILLER AS SENIOR ADVISOR—  
MEETING WITH OFFICE OF ETHICS COUNSELLOR

**Hon. J. Michael Forrestall:** Honourable senators, Mr. Wilson is reported to have said that he had not yet met with Mr. Miller. Yesterday, the Leader of the Government suggested to me that such a meeting had already taken place. There was some conflict in language as to whether or not Mr. Miller had met with Mr. Wilson, or whether Mr. Miller had simply had conversations with Mr. Wilson's staff. Could the Leader of the Government in the Senate enlighten us as to which was the actual situation?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I hope I read from my notes. My notes say very clearly that Mr. Miller has already met with officials of the Office of the Ethics Counsellor. I did not, I do not think, say that he had met with Mr. Wilson. If I did, then it was inadvertent on my part.

**Senator Forrestall:** Honourable senators, I accept that. However, it does lead to a bit of a conflict there.

REQUEST FOR CONFLICT OF INTEREST GUIDELINES

**Hon. J. Michael Forrestall:** Honourable senators, does the minister know whether she can table here in this chamber the guidelines that require signatures by the Prime Minister's staff in this regard?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not have that document to table today. However, as I have indicated in the past, I will try to get it at the first available opportunity.

I think perhaps the Honourable Leader of the Opposition said it best: "Just watch me."



## HEALTH

## STUDY OF NATIONAL PROGRAM—INVOLVEMENT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE

**Hon. Douglas Roche:** Honourable senators, my question is addressed to the Leader of the Government in the Senate. Today, at noon, the Prime Minister announced the appointment of a royal commission headed by Roy Romanow, former Premier of Saskatchewan, to study Canada's health care needs in all aspects of health care. As honourable senators in this chamber are well aware, about a year ago the Senate, through its Standing Senate Committee on Social Affairs, Science and Technology, started an in-depth study on all aspects of Canada's health care system. That committee study is headed by Senators Kirby and LeBreton. Among others, I have the honour to serve on that committee.

Last week, the first of the intended five reports were presented by Senator Kirby's committee. That set the stage for very important recommendations that will be coming down the line. In fact, yesterday, the Leader of the Government in the Senate called this work first-class. Senator Carstairs added that the report was greeted with great public interest.

Today, we read from Jeffrey Simpson in *The Globe and Mail*:

The Kirby committee's first of five reports arrived last week, and it raised a series of the important issues facing the system. The committee will offer recommendations in due course, but the early questions illustrated that it's on the right track and that, given time, it will help Canadians think through necessary health-care changes for the 21st century.

The duplication caused by the appointment of a royal commission on top of a Senate committee doing the same work is astounding. It is unbelievable. Is this a case of Peter not knowing what Paul is doing? Or is it a case of Peter not caring what Paul is doing? Has any thought been given by the government to the duplication of costs involved in summoning witnesses, travel expenses and everything that goes into a national report of this scope? What is going on here today?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for his question. He is quite right: At around noon today, the Prime Minister announced the establishment of a commission. However, it is a uniquely different commission from commissions that have acted in the past. There is only one commissioner. There is not a group of individuals, which would require the meshing of schedules and times when they can sit and that type of thing. There is only one commissioner who, at the time of the landmark agreement signed last September between all of the first ministers, was one of those first ministers.

His primary task will be to take the agreement signed by all first ministers in September, to build on that agreement and to work with Canadians and with their government leaders toward ensuring that that agreement comes to its full potential and full reality.

Having said that, honourable senators, there is nothing here that is inconsistent with the work that is presently being done by the Standing Senate Committee on Social Affairs, Science and Technology which, just a few short days ago, tabled their volume report entitled, "The Health of Canadians: The Federal Role." As the honourable senator knows, until January of this year I was a member of that committee and had input into the development of this report. Perhaps that is one of the reasons that I think it is a particularly good report. However, there are many others. In that regard, I refer to the other members of the committee who made such remarkable contributions in setting forth the myths and the realities of Canada's health care system as it exists.

The Senate committee will continue to do its good work. It will be in addition to the work done by the former Premier of Saskatchewan, the Honourable Roy Romanow. Together, I think the two will chart a path for the 21st century in the evolution of health care in this country.

**Senator Roche:** Honourable senators, I say with respect that the minister has done the best she can with a brief that is hard to defend. First, I want to pay Roy Romanow my deepest respects and highest regards as an individual. For one person, even one with an eminent background, to be put in the position of making recommendations of such a serious character that will, in the long run, affect the health of every single Canadian, and to do that over the views of 12 senators on a duly appointed committee seems to me to be a flagrant disregard for the rights, if not the abilities and potential, of the Senate.

• (1400)

Speaking of Michael Kirby's distinguished work over the years, Jeffrey Simpson writes:

This activism is rare for a member of the Canadian Senate, an institution better known for somnolence than activity.

Honourable senators, I have been in this place for only two and a half years. However, I have been deeply impressed with the work done by committees of the Senate.

**Hon. Senators:** Hear, hear!

**Senator Roche:** There are several chairmen sitting in this chamber at this very moment who have been responsible for work of benefit to Canadians. How is the Senate supposed to keep doing its work with the respect and dignity it deserves if it is to be trumped for some reason — I am not quite sure what the real reason is — by the appointment of a unilateral Royal Commission which, in effect, is trumping a Senate committee?

**Senator Carstairs:** Honourable senators, if we can enter into a little bridge analogy here, we are playing no trump in the sense that no one will trump. No one is a spade over a heart; no one is a diamond over a club. No one will play a game of bridge with this particular issue.

My honourable colleague Senator Kirby and I go back a very long way; in fact, longer than any of you in the chamber. We were classmates together for four years at Dalhousie University. No one here has better respect for the work of Senator Kirby than yours truly, who saw it at a very early stage in his life. I remember one particular incident when he was the editor of the *Dalhousie Gazette*. However, I will not tell the side opposite about that because they would not necessarily be flattered about that particular front page story about a former prime minister of this country.

The reality is these two groups are doing very good work. The former Premier of Saskatchewan has a knowledge that is shared to some degree, I must say, by members of the Senate committee. Senator Callbeck has been a former premier and I believe she is still sitting on that committee. Certainly the Honourable Senator Robertson has wonderful knowledge and expertise about the provincial workings of the health care system. There is also their collective additional knowledge of the federal workings of that system.

Mr. Romanow has a particular skill set and knowledge set that can contribute to the debate and discussion of how to prepare Canada for the 21st century. He is not in competition with the Standing Senate Committee on Social Affairs, Science and Technology. It will be a cooperative partnership of those two bodies.

**The Hon. the Speaker:** Honourable senators, the half hour set aside for Question Period is running out. Perhaps Senator Roche can wind up and I will then go to Senator Lynch-Staunton with his supplementary question.

**Senator Roche:** Honourable senators, I immediately defer to Senator Lynch-Staunton.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Will the Leader of the Government in the Senate not agree that Senator Roche's apprehensions, which are shared by many, would not have been raised had former Premier Romanow been named a member of this place? In that event he could have joined the Social Affairs Committee and we could have had the benefit of his views and he could benefit from the committee's work so far. Perhaps it is not too late for that to happen.

**Senator Carstairs:** Honourable senators, I have no idea whether Premier Romanow, who has been a dedicated member of the New Democratic Party for many years and whose official party stance is in opposition to this chamber, would want to sit in this venerable hall. However, it is clear that we will benefit from his knowledge and expertise here, working in partnership with the Senate standing committee.

**Senator Lynch-Staunton:** Does that mean if he were called before Senator Kirby's committee as a witness, he would refuse to appear because of his feelings about the Senate?

**Senator Carstairs:** I refuse to answer what is essentially a hypothetical question.

#### STUDY OF NATIONAL PROGRAM—MANDATE OF COMMISSIONER

**Hon. Marjory LeBreton:** Honourable senators, great minds think alike. I was about to ask the same question about appointing Mr. Romanow to the Senate and putting him on our committee.

I have not seen the mandate for Mr. Romanow. There are certainly different views around the country about his success in the field of health care and medicare. People in Saskatchewan have their own views on that topic. The one thing I have been told about the mandate is that this particular position reports directly to the Prime Minister. I think we have examples showing that that is not a wise course to follow. Can the mandate be changed so that he reports to Parliament?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, it is the Prime Minister who has appointed Premier Romanow, and he will report to the Prime Minister. I do not think it appropriate at this point to cast any aspersions on Premier Romanow, either as the former Premier of the Province of Saskatchewan or for his health care initiatives in that province. Clearly the people of Saskatchewan have returned him to public office on more than one occasion, and his success speaks to some degree for itself.

**Hon. Brenda M. Robertson:** Honourable senators, what bothers me most of all in what has been said this afternoon is that Mr. Romanow will be responsible for pursuing — I am paraphrasing now — this landmark decision of the premiers and the federal government that was agreed to a year or eight months ago. There are some provinces in this country that do not consider that agreement to be a landmark agreement. The provinces had to sign, otherwise they would not get anything.

In my province, that landmark agreement made it possible for the federal government to pay for health care for two weeks. That is not very much money when you consider the population of that small province.

If the purpose is to develop more of these landmark agreements, then some of us have to be a bit apprehensive. We must be apprehensive about this.

Senator LeBreton asked half of my next question. I should very much like to have the complete terms of reference for Mr. Romanow. I should like to have those terms of reference tabled as quickly as possible so that we may know what we are dealing with. Certainly, as a member of the Senate, I am not interested in doing the work for Mr. Romanow. I do not mind being cooperative in some things, but until we see those terms of reference, we will not know what we are dealing with.

• (1410)

**Senator Carstairs:** Honourable senators, my understanding is that the terms of reference were in the press release. I understand the press release will be delivered to everyone's office, if it has not already arrived. It certainly has arrived in my office.

If there are more detailed terms of reference, I will seek to obtain them for the honourable senator.



A press conference will be held at 3:30 p.m. with Mr. Romanow and the Minister of Health, Mr. Rock, during which I am sure more detail will be given as to exactly what will transpire through this royal commission or task force that is to be headed by former Premier Romanow.

The agreement that was signed in September 2000 was certainly heralded by all premiers at that time as being a significant step forward. It was not heralded as the last piece of the puzzle, by any stretch of the imagination. That is what the Kirby report, or the Kirby-LeBreton report as I call it, said so clearly: that the medicare of the 1960s is different from medicare in the 21st century. In the 1960s, we thought only in terms of hospitals and payment for physicians. Those were the two main ingredients. Since that time, a far more complex system has evolved. Therefore, the relationships between those who deliver the care — the provinces — and those who contribute funds to provide that care — the federal government — have become much more complex as well.

**The Hon. the Speaker:** Honourable senators, unfortunately we have used up our time for Question Period. However, a senator might ask for leave to extend it.

**Hon. David Tkachuk:** Honourable senators, I ask for leave to extend it.

**The Hon. the Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

## MULTICULTURALISM

COMMENTS BY MINISTER

**Hon. David Tkachuk:** Honourable senators, I have a question for the Leader of the Government in the Senate.

Let us suppose that the Minister of Multiculturalism, Hedy Fry, had said the following: "We can just go to Winnipeg, Manitoba, where crosses are being burned on lawns as we speak. It is very important we recognize that race, religion and culture in this country are part of our strengths and that we must keep every day to ensure that we will —"

Suppose that she was then cut off, but later came back to the House and said: "Mr. Speaker, today in question period I made reference in my answer to an incident in Winnipeg, Manitoba. I would like to clarify it because I had to leave the House early and was not here for the discussion. I am responding to the point of order. In Manitoba, there have been incidents of hate crime, including cross burnings. I know of this because I was contacted immediately when these incidents occurred, by the mayor of Winnipeg."

Suppose she then said this about Winnipeg: "In my position as Secretary of State for Multiculturalism I funded the mayor to set up a task force right away. The task force met and came out with

some remarkable and courageous recommendations which the mayor is implementing."

If it were later determined that she made these points, and that she knew none of them to be true, would the honourable leader have accepted her apology?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the tenor of this question really does disturb me, I must be clear. We have had an incident where two communities have had aspersions cast on them, which are not true. For people listening to what Senator Tkachuk has had to say today, that would indicate that there had been a third community so named.

Honourable senators, we need to be careful. We talked the other day about being careful of our language. There are people in the gallery. I hope they do not have any misapprehension that the minister had made reference to Winnipeg, because, in fact, she had not, under any circumstances, made reference to Winnipeg. However, had she done so, I would have been equally concerned as I was about her references to the other communities.

I was pleased that she apologized, and I have accepted that apology. Perhaps the honourable senator is not quite so forgiving. However, I do believe that she has made an apology for statements that she made which were clearly in error.

**Senator Tkachuk:** I was very clear in what I was trying to do here. I was quoting the words used by Ms Hedy Fry in making comments about a particular community in Canada. I thought to myself, and I believe it to be true, that if she can say this about Prince George, British Columbia, she could say the same about Saskatoon, Saskatchewan. She could say that about any community in this country.

Honourable senators, I am only asking a question. I want to know how members opposite feel about statements like this. I want to know whether, if this had been said about Winnipeg, Manitoba — and here I am quoting Ms Hedy Fry; this is what she said about Prince George. I am using her words, not mine — would you have accepted her apology?

**Senator Carstairs:** I answered that clearly. Yes, I would have accepted it.

**Senator Tkachuk:** Thank you very much.

## ANSWERS TO ORDER PAPER QUESTIONS TABLED

TREASURY BOARD—  
EMPLOYMENT EQUITY AND VISIBLE MINORITIES

**Hon. Fernand Robichaud (Deputy Leader of the Government)** tabled the answer to Question No. 2 on the Order Paper—by Senator Oliver.



TREASURY BOARD SECRETARIAT REPORT  
ON EMPLOYMENT EQUITY

**Hon. Fernand Robichaud (Deputy Leader of the Government)** tabled the answer to Question No. 4 on the Order Paper—by Senator Oliver.

## ORDERS OF THE DAY

### PROCEEDS OF CRIME (MONEY LAUNDERING) ACT

#### BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Furey, seconded by the Honourable Senator Gauthier, for the third reading of Bill S-16, to amend the Proceeds of Crime (Money Laundering) Act.

**Hon. James F. Kelleher:** Honourable senators, I rise today to speak on third reading of Bill S-16, to amend the Proceeds of Crime Act or, as it is more widely known, the Money Laundering Act. The amendments contained in this bill are based upon an undertaking made by the government to the Senate Banking Committee last June.

As honourable senators will know, every June the Liberals are anxious to pass every bill that they can before the summer recess. Last June was no exception.

In the case of the money laundering bill, rather than agreeing to make the amendments that all agreed were necessary, the Secretary of State responsible for Financial Institutions instead undertook to make the changes at a later date. I suppose anything can be fixed later, but I question the point of conducting a thorough study of any bill when needed amendments are simply put off until a later date.

Honourable senators, in addition to the undertakings made by the minister last June, the Standing Senate Committee on Banking, Trade and Commerce also unanimously made three other recommendations for the minister to consider and, hopefully, implement. When this bill was introduced, we were dismayed to discover that the Liberal government had chosen to ignore our recommendations.

Nonetheless, the Progressive Conservative members of the committee were intent on again pursuing the proposed amendments when the bill was referred to the committee for its consideration. After hearing more testimony on the issues, we decided that we would reintroduce only one amendment, that of reducing the time periods for the ongoing review of the act itself and the new money laundering agency in particular.

I should note that this new agency is called the Financial Transactions and Reports Analysis Centre, or FINTRAC for short.

Our members of the committee believed that we had heard enough testimony from various witnesses, including FINTRAC, to justify our concerns about exactly what information was to be collected from whom, and what was to be done with it. We were surprised, therefore, when Liberal members of the committee questioned whether our amendment was in order. After some debate, the decision was made to rule it out of order. The end result is that the committee rejected an amendment that was almost identical to the one that was supported by the committee just nine months ago.

Our colleagues in the House will now have an opportunity to study this bill further. We hope that they will get somewhat more consideration for their efforts than we received.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read third time and passed.

• (1420)

### FEDERAL LAW-CIVIL LAW HARMONIZATION BILL

#### THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator De Bané, P.C., seconded by the Honourable Senator Poulin, for the third reading of Bill S-4, to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law.

**Hon. Jeremiah S. Grafstein:** Honourable senators, I intend to speak to this bill and to move an amendment. Perhaps I should do that at the outset and then provide my reasons of justification.

#### MOTION IN AMENDMENT

**Hon. Jeremiah S. Grafstein:** Honourable senators, I move, seconded by Senator Joyal:

That Bill S-4 be not now read a third time but that it be amended,

(a) on page 1, by deleting the preamble; and

(b) in the English version of the enacting clause, on page 2, by replacing line 1 with the following:

“Her Majesty, by and.”

Honourable senators, this is the same motion that I tabled before the committee.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Senator Grafstein:** Honourable senators, those who were at the committee meeting will recall this motion in amendment, and I was delighted that three others of my Liberal colleagues, Senator Joyal, Senator Moore and Senator Cools, supported the resolution. Senator Gustafson abstained on the resolution. The motion was defeated.

Honourable senators, I will restate more precisely the reasons for the motion. Based on the testimony before the committee, as amplified by the debate yesterday in this chamber, the preamble is unclear, unintelligible in parts, and inconsistent with the essence of the legislation.

That is, honourable senators, tantamount to being deemed out of order: had I moved a motion yesterday that the Speaker opine as to whether the preamble was inconsistent, the entire piece of legislation could have been in jeopardy. That is not my intent. Nor is it the intent of those who have serious questions about Bill S-4.

Honourable senators, I agree with the essence of the harmony of the bill. I agree with the statements made yesterday by those who support the bill that it is long overdue. I also agree that it is a brilliant piece of legal craftsmanship to harmonize two outstanding legal traditions in Canada — the civil law and the common law — as it applies most particularly under this legislation to federal legislation in Quebec. It is a bill that unites and harmonizes.

Therefore, honourable senators, it is more appropriate to deal with this issue in the context of a motion to delete the preamble, rather than on a point of order. It would be folly if a good bill such as this, on which so much work of great legal excellence has been done, and to which little or no objection has been raised, were to be lost. Hence, this motion is a clinical, surgical amendment to remove the gratuitous, and possibly deleterious, preamble. If, in fact, the Senate concludes that the portions of the preamble are unintelligible and inconsistent with the legislation, and perhaps unconstitutional, this would pollute the legislation itself.

Honourable senators, it is useful, for new senators in particular, to consider the primary duty of a senator, which is to opine on legislation — not only the constitutionality and effectiveness of the legislation but the appropriateness of the language used in the drafting of that legislation. All these issues, honourable senators, arise in this bill.

I will begin with a precedent set by former Speaker Macnaughton, of the other place, who ruled that a statute was out of order, in part, because of the preamble. Bill C-17 had first reading on February 20, 1964 in the other place. It was a private member's bill; the preamble was long, convoluted and raised serious questions. I quote from page 1717:

For different reasons, which I will try to summarize this briefly as possible, I must regretfully rule the motion for second reading of this bill to be out of order...

The argument made by the hon. member to justify the passage of the measure is found at great length in the preamble thereto, to which I will refer later on.

Speaker Macnaughton went on to speak to the preamble. Bear in mind that this is the rationale, in part, for ruling that the entire piece of legislation — a private member's bill, not a government bill — was out of order.

Speaker Macnaughton went on to say

As stated by the conference of commissioners on uniformity of legislation in Canada in 1942, 'Preambles should be avoided. An act should explain itself and if reference to a preamble is necessary in construing any provisions of an act, it would indicate that the draft requires revision.'

Honourable senators, that was said by the uniform law reform commissioner. That was the standard, although there have been exceptions.

**Hon. Lowell Murray:** What does the honourable senator mean by "standard?" It was the commission's view, but that does not make it a standard.

**Senator Grafstein:** Honourable senators, I will deal with the exceptions to the rule in a moment. Speaker Macnaughton continues:

Sir Allison Russell, K.C., expresses the same opinion in his book on legislative drafting when he further states, "It is only in exceptional cases, usually those where Constitutional changes are being enacted, that a preamble is now used to explain the object of an act. A preamble cannot restrict or extend the enacting part, when the language and scope of the act are not open to doubt."

However, it is not mainly on account of the preamble that I have to declare this bill out of order, but for the reasons given previously.

In other words, it was in part because of the preamble that he declared the entire bill out of order.

Honourable senators, I bring that to your attention because I want to put the drafting of this bill in that drafting context.

This is a rather unusual bill. I refer to a general point, not a substantive point — a question of policy. This government bill was introduced as a Senate bill before receiving approval in the other place. This is not a normal practice. However, from time to time in the past, the Senate has undertaken to be the legislative chamber of first consideration.

Honourable senators, I ask you: What then is the Senate's duty when the government chooses to introduce legislation in the Senate? What test should guide us? What happens to the Senate's statutory and constitutional responsibility as a chamber of sober second thought?



It strikes me, honourable senators, that we have a higher duty to ensure care of legislation so that the legislation is beyond question or reproach. If we have a reasonable question of doubt about the efficacy of any portion of the legislation, we should proceed with caution. We must doubly distill legislation that appears in this chamber, because we will not have an opportunity to give it a sober second thought. As a general statement, to which other senators may or may not agree, the Senate has a higher duty when we discover, *prima facie*, legislation with uncertainties and inconsistencies. We should impose upon ourselves a higher standard than normal when it comes to this practice of legislation of first proof.

• (1430)

In any event, honourable senators, if you do not accept that standard, there is no substitute for careful and precise drafting, most especially when it comes to a legal bill. Why? Because this legal bill, as it applies to federal legislation, will have a day-to-day impact on ordinary life affecting every resident and citizen of the province of Quebec. We have a higher duty to be satisfied that legal legislation, as opposed to policy legislation, is precise because every word counts.

Senators have opined that these are simple statements. These are not simple statements. Every word counts, particularly in a legal bill.

On first reading this legislation, it seemed to me that warring draftsmen were at work. There were those who carefully prepared the legislation to harmonize the civil and the common law as it applies to federal legislation. It was brilliantly done and brilliantly executed. Then there were other minds at work, I believe, who prepared the preamble almost as a confusing afterthought. As Speaker Macnaughton indicated, preambles are, on their face, bad practice for exactly this reason. Yes, we can have preambles; yes, as Senator Murray said, this is a current practice; yes, the Multicultural Act does have a preamble; yes, the Broadcasting Act does have a preamble; and, yes, the Transportation Act has a preamble.

**Senator Murray:** All of which you voted for, senator.

**Senator Grafstein:** Agreed, but let me tell honourable senators the difference between those bills and this bill. In each one of those bills, without exception, the government was seeking to give policy directives and a priority to delegated authority. In other words, in the Broadcasting Act it was the CRTC; in the Transportation Act it was the commission; in the Multiculturalism Act it was the council; in the Official Languages Act it was the commissioner.

I see Senator Murray disagreeing with me.

By the way, there are other exceptions, but at the heart of those exceptions is the fact that the modern government, which is not able to draft legislation precisely in the heart of legislation, gives policy directives to give discretion under delegated authority. That is the substantive difference, but not when it comes to legal drafting.

We do not have a preamble to the Criminal Code, for good reason. The Charter has a very simple preamble — God and the rule of law. Senator Joyal, Senator Murray and others in this chamber will remember that every word counted in the Charter. Every word was debatable.

Honourable senators, I think we owe it to ourselves, if we can, to avoid a bad practice that might have the deleterious effect of playing to judges' uncertainty, that allows them to roam freely and substitute their opinion for the opinion of Parliament. If we believe, as many of us do, that the supremacy of Parliament is still an important element in the life of Canada and an essential characteristic of Canada, then I think we owe it to ourselves to be absolutely satisfied beyond a reasonable doubt, particularly in legal-like legislation, that these words are correct and will not have an inconsistent impact.

The minister and those supporting this legislation suggested that the rationale for incorporating the preamble was the resolution of this house in the aftermath of the referendum. I see Senator Beaudoin nodding in agreement. Yes, that is true, but let us again look to what the authorities say about a resolution.

A resolution of this chamber is entirely different than an order of this chamber. A resolution of this chamber based on authorities such as Driedger — and honourable senators can look at them — all say the same thing. They say that a resolution of this chamber is an opinion at a moment in time of those who support that particular resolution. In effect, the resolution disappears at the end of that session.

An order is different, honourable senators. Why? An order may last as long as that particular session or, by the very nature of it, continue on into a further session.

The authorities are clear that a resolution is different. Senator Stewart, a former colleague of ours, said in his text that it is an opinion. It is a moment in time.

I will not belabour the point, honourable senators, because the authorities are there for those of you who are interested to satisfy yourselves that this is the intent and the practice with regard to resolutions both under English law and Canadian law. The authorities are agreed that a resolution is an opinion at a moment in time.

What did that resolution say, honourable senators? Let us take it as if it should have some weight for us with respect to this legislation. The heart of that resolution was the phrase "distinctive society." There was a great debate in this chamber during the Meech Lake deliberations and on the resolution itself about those words. Those are potent political words, whether one agrees or not.

I see my colleague Senator Bacon giving me a harsh look, which I understand because she and I disagree. We are friends but we disagree on this matter. That only indicates how good friends can disagree on a fundamental political point. It is an explosive question, and everyone knows that. This is acceptable.



The word "distinctive" was used in that resolution, which means different. The word "unique" was adopted in the second rationale that the minister gave us for this legislation. The Calgary Declaration uses the word "unique," which is entirely different than the word "distinctive." According to the Oxford Dictionary, "unique" means one of a kind, unparalleled, unequalled and superior. That is what the dictionary says.

Senator Joyal made an excellent point yesterday when he said that if one uses those words, one had better amplify them to make sure they are understood so that portions of Quebec society are not excluded. If we look at the words in the Oxford Dictionary and the plain meaning that judges will apply, this is a serious question.

**Senator Murray:** Which of the two formulations does my honourable friend accept?

**Senator Grafstein:** Neither, but, having said that, I want to make my point very clear. It is important that any definition be clear, and those two definitions are not.

**The Hon. the Speaker:** Honourable senators, I regret to advise that Senator Grafstein's 15 minutes have expired. Does he wish leave to continue?

**Senator Grafstein:** Yes.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Grafstein:** Honourable senators, let me turn to the resolutions one at a time. I ask each senator to read each one of these resolutions from start to finish before they vote.

Senator Kinsella wondered about the meaning of the phrase "access to federal legislation." Does it mean benefits? Does it mean equal access or access to the rule of law? It is not clear. It does not mean anything.

Then we read the word "all Canadians." On a plain reading of the first resolution of an important bill that seeks to equalize the two traditions in our country, we exclude everyone as opposed to those who are Canadian citizens. That is contrary to the large debate that went on across the country with respect to the definition of how the Charter applies.

• (1440)

Honourable senators, this preamble is unconstitutional. Imagine that we are about to pass a preamble that, on its face, is inconsistent with the Charter. There is no further argument. I do not care what the minister says, or what the proponents say. On its face, the preamble says "all Canadians." Does this mean that some judge in the future will say that if someone is a Canadian citizen, the Civil Code applies, but if someone else happens to be a landed immigrant, a refugee or an Aboriginal, it does not apply? How can we let this pass?

Honourable senators, I could go through each preamble, and each one is more confusing than the one before. I should like us to read one of them together. It is an exercise in mutual education. Perhaps honourable senators would turn to the fifth recital, please. This will be my final argument.

I will read the recital. If you have the statute, read it for yourselves. I have read it six times, and still do not understand it. I asked several legislative counsel what is meant, and they do not understand. Perhaps there are greater minds here than mine. The recital states:

WHEREAS the provincial law, in relation to property and civil rights, is the law that completes federal legislation when applied in a province, unless otherwise provided by law;

I will read it again:

WHEREAS the provincial law, in relation to property and civil rights, is the law that completes federal legislation when applied in a province, unless otherwise provided by law;

That is incorrect. On the face of it, it is incorrect. It is unintelligible. It is meaningless. It is deleterious. This is just a soft notion. This was not meant to be harmful. When you read it, it does not make any sense.

Honourable senators, I urge you to support this motion to delete the preamble. Remove the uncertainty. Support the legislation. If the other chamber chooses to turn it back, perhaps they will get a big, cautionary bell to warn them not to do things that are inconsistent on the face of it. Do not do things that force us to pass legislation that is inconsistent with the Charter. Do not force us to do things that are inconsistent with strong, potent political issues that are unnecessary, that will inflame rather than equivocate and modify passion and feelings.

Honourable senators, I urge your support to delete this horrendous and sloppy preamble.

**Hon. Gérald-A. Beaudoin:** Unless there is a question, I ask for the adjournment of the debate.

**Hon. Anne C. Cools:** I thank Senator Grafstein for an excellent presentation. I should like to assure Senator Grafstein that his statements about the resolution of December 7, 1995 in respect of the distinct society are absolutely accurate. At the end of the session of Parliament, that resolution would have been washed off the Order Paper when Parliament dissolved.

The honourable senator has said that the preamble should be deleted. He has moved a motion in amendment so to do because the preamble itself is inconsistent with the substance and content of the bill. In addition, the honourable senator has said that that inconsistency between the preamble and the substance of the bill is of such a nature as to render the whole legislative proposal, the bill, defective.

I am assuring honourable senators that I understand clearly, because I feel quite strongly about this point. The honourable senator has also said that this preamble is a pretender because it makes pretense at being a mini-Constitution or a pseudo-Constitution.

The Minister of Justice told us that this particular bill is the first bill of many. There will be subsequent bills coming before us, effecting this enormous task of harmonizing two sets of law. I am sure the minister has not told the honourable senator the direction that she intends taking. At the committee, I had said that it was an act of faith to vote on this bill without knowing the full direction of the minister. I wonder if honourable senators have wrapped their minds around the impact of this flawed preamble on future legislation that will be coming to us, of which we have no knowledge as to content. It is an important point.

**Senator Grafstein:** I thank the honourable senator for that question because it was interesting. Senator Beaudoin, members of the committee and I had a discussion about the word "harmonization." I tried for legislative purposes to trace the history of the word "harmony." Although I have not rechecked it myself, I have been told that it comes from Dreidger in his textbook entitled: *The Construction of Statutes*, which is well known. He was a deputy attorney general and one of the great draftsmen and teachers of legislation in this country. He was considered the outstanding authority.

Dreidger, on page 29 of his textbook, deals with the word "disharmony." In that, he refers to an English case and talks about the preamble. This is related to Senator Cools' point. He uses this at the end of an expression when quoting from an English case. It states:

...unless by such exposition a *contradiction* or *inconsistency* would arise in the act by reason of some subsequent clause, from whence it might be inferred the intent of the parliament was otherwise.

In other words, the entire question of harmonization came with respect to bringing harmonization to legislation. Senator Beaudoin and I had this discussion. It was a good discussion because he improved my nuance and my understanding. This is not to bring the two pieces of tradition together as a hybrid. It is not to harmonize it in that sense. It is to bring the two positions together and give them equal weight to coexist.

The harmonization lies in the fact that they are being brought together to coexist and be rational, one with the other, not to interact with one another as the preamble indicates. It is not an interaction, but each in its own domain to be consistent one with the other. I thank the honourable senator for bringing that nuance to my attention.

The bill at the outset talks about harmonization of two coexistent, equal traditions under federal law as it applies to the Province of Quebec, which we should have done back in 1867. To say, on the one hand, that one tradition is superior, different, or more precise than the other is inconsistent; that is where the

word "harmony" comes in. Senator Cools is quite correct that the danger is that if we do not correct it now and make clear the manner in which we are proceeding, we will run into deeper and more difficult waters later. To my mind, proceeding with the legislation alone makes it clear. Thank you for that clarification.

**Senator Murray:** Honourable senators, as to the idea of preambles generally, I may be more in agreement with the honourable senator than he thinks. Nevertheless, we have a preamble here. The question is whether the house ought to take it upon itself, all things considered, to delete it. I certainly would not support that idea because I see nothing objectionable to the preamble.

In view of the statements that Senator Grafstein has made about the preambles in previous laws, for example, the Official Languages Act, the Multiculturalism Act, the Environmental Protection Act, the National Transportation Act, the Telecommunications Act, surely the honourable senator is not arguing that the preambles were strictly speaking necessary in those cases, any more than the preamble is strictly speaking necessary in this case. We are agreed that the laws in those cases would stand on their own, are we not?

**Senator Grafstein:** Before becoming a senator, I practised before the National Transportation Commission and before the CRTV. The difficulty is that if you delegate authority to a quasi-independent tribunal — and this goes back to Lord Hewart and the danger of too much delegated authority, resulting in Parliament losing all control, and they have to opine on individual issues — it is preferable to set out clearly what the objectives should be as opposed to saying, for example, the Canadian Broadcasting System. In the first example, under the Broadcasting Act — this is all recall, as I have not looked at this legislation for years — the priority, first and foremost, was to have a national broadcasting system, to give the CBC priority, CBC-1. That meant a lot of different things.

• (1450)

Absent that, it would be very hard to draft legislation, in my view, to direct quasi-independent tribunals or bodies without those objectives. It would be much more difficult than doing it that way. Those are the cases that I think are acceptable. Indeed, administrative tribunals still get into trouble with that approach. There is still difficulty there, but here, there is no excuse. We do have an explanatory note in this bill that should satisfy the senator. It is on the face of the bill and it is brilliantly drafted. I will read it for you.

A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law

It is brilliant, concise, accurate and unassailable. Why tamper with something that is good? Why should the imperfect drive out the good?



**Senator Murray:** I think it is a real stretch to suggest that a preamble was necessary, for example, to the Multiculturalism Act in order to give direction to the Multiculturalism Council or, in the case of the Official Languages Act, to give direction to the commissioner. My friend can read those preambles and acts for himself and he will see what I mean.

Let me ask the honourable senator about resolutions. He has made clear his view that a resolution passed in one Parliament — in this case the resolution affirming Quebec's distinct society — has no consequence beyond that Parliament. Surely he would agree that until such time as it is revoked, it does have some political and moral weight. I ask the senator that question in view of the fact that the present Prime Minister of Canada hung his hat on a resolution more than a half-century old and passed not by two Houses but by one when it came time to objecting to Conrad Black's elevation to the House of Lords.

**Senator Grafstein:** How do I deal with that? My good friend Conrad Black is a great Canadian citizen and should remain such. He has made a great contribution to the country and I hope he continues to do so, even though I fundamentally disagree with his editorials almost every day.

Having said that, it is interesting, and the senator raises an important point, but those are not the words encapsulated in this preamble.

**Senator Murray:** Would the honourable senator accept those words?

**Senator Grafstein:** That is not the issue before the house. The Honourable Senator Murray knows my position on this. I have made it clear to this house in debates, over and over again, where I stand on that issue. I do not want to return to that debate, although we may, later on this month. I would prefer not to.

I think the Province of Quebec has moved beyond that debate. Therefore, why should we try, in fact, by legislation that will have a far-reaching impact, to bring it back into common currency when, by the way, this house has never opined on the word "unique" characteristic? We have never opined on that word. Therefore, I beg to disagree on the essence of the point.

This preamble is gratuitous and unnecessary. Therefore, if the preamble is unnecessary, certainly we can agree that if it is good legislation, to let the legislation go forward.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, reference has been made a few times this afternoon to the Multiculturalism Act, which honourable senators may recall was before this house in 1989, I believe, under Bill C-68. When we drafted that bill, speaking from my vantage point of the day as a bureaucrat, my recollection is that we saw the preamble to that act as being an inspirational statement, not as giving direction for interpretation. Senator Murray is quite

right that the act, by its very nature, is not enforcing anything. There is a statement of cross-government commitment and there is a counsellor, et cetera.

That preamble was inspirational. Some other preambles are more directive in terms of interpretation and guidance for administrative or other tribunals to interpret.

My question to the honourable senator is this: If I have understood Senator Grafstein correctly, he agrees with the content of the nine substantive parts of the bill, from pages 2 to 78.

If there is a desire that there be a preamble, what kind of a preamble would the honourable senator look for, one to give guidance or one to be inspirational?

**Senator Grafstein:** Honourable senators, when it comes to a legal bill as opposed to a policy bill — I am trying to make that distinction, not as a term of art but as a term of discussion — every word counts in a way that it does not count in a general bill with a preamble of inspiration. I think the explanatory words on the face of the bill are clear-cut and inspirational. I am inspired by these brilliant words to harmonize under federal law in the Province of Quebec in French and English the civil and common law. We should have done it in 1867, as senators suggested. No one quarrels with that. It is a great idea. It brings into play a bijural notion, a question of equality of interpretation, which is excellent, supreme, great.

However, why go beyond that? Why spoil something with political foliage? If the government wishes to congratulate itself, as it should, let it congratulate itself in a speech, not in legislation that may be inconsistent. Certainly, resolution one on its face is inconsistent with the Charter. There is question about that. Why do it?

Here we have brilliant, precise explanatory notes. Obviously, mind number 1, in drafting the legislation, drafted that explanatory note, and mind number 2 drafted the preamble. What does the expression "window on the world" mean?

**Senator Murray:** To be fair, all those questions were canvassed at the committee, and the official did answer.

**Senator Moore:** He said it was unnecessary.

**Senator Kinsella:** I have two short further questions.

Honourable senators, Senator Grafstein mentioned preambular paragraphs 1 and 2, and just now 4. As far as paragraphs 1 and 4 are concerned, the Charter will take care of them because the Charter overrides them. How does the honourable senator answer that? He says that we should not worry about it. The Charter guarantees in section 15 "everyone," and that will obviate any harm done by putting in the word "Canadian."



**Senator Grafstein:** Honourable senators, in day-to-day commercial law, private law, should we give anyone in the province of Quebec or, indeed, any Canadian or anyone in Canada an opportunity to launch an appeal on the basis that the recital is restrictive as it applies to the act?

• (1500)

Why give anyone a hint of an opportunity to do that, and allow someone to pose a legal question and possibly take a court action based on that? Why give anyone an opportunity to do that? It is not good practice, it is not good legislation and it is not good law.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I am pleased to participate in the debate on Bill S-4, and more particularly on the amendment that has been proposed by my colleague the Honourable Senator Grafstein.

I want to be clear that I do not, and neither does the government, support the honourable senator's desire to repeal the preamble. I should like to set it in context. Bill S-4 is the first in what will be a series of initiatives to harmonize the laws of Canada with the civil law in the Province of Quebec.

Every witness who appeared before the committee, and every senator who has intervened in the deliberations to date, either in committee or in this place, so far has signalled their support for the objectives of the bill and every one of the 178 substantive provisions and clauses in the bill. This includes the honourable senator who has just made this motion. He does not object to any of the provisions of the bill.

There were two exceptions, and it is important to put those on the record. Apparently there was an exception raised in the committee about the provisions relating to marriage, on which one senator expressed some reservation and another senator abstained, but that was the end of the discussion.

In 1994, the Province of Quebec modernized its civil code. As Senator De Bané has mentioned, this development led to two important initiatives of the Federal Department of Justice: The first, in 1993, was the Policy for applying the Civil Code of Quebec to Federal Government Activities, and the second was the Policy on Legislative Bijuralism of 1995. Bill S-4 is the continuation of that work.

I think all honourable senators, and people right across the country, agree that Canada has two legal traditions and two official languages. These are essential characteristics of our federation, and Bill S-4 does them justice by facilitating the coexistence of both legal traditions, each of which is fully developed and utilized in both official languages.

Bill S-4 is also consistent with commitments made in the resolutions on the distinct character of Quebec society adopted by both Houses of Parliament in December 1995. Those resolutions, and the Calgary Declaration, recognize the

distinctiveness of Quebec and identify its civil law tradition as the key element of that distinctiveness.

I wish to congratulate honourable senators on both sides who are members of the Legal and Constitutional Affairs Committee for their hard work and careful deliberations on this bill. The committee, when it was discussing this bill, dealt with six proposals from individual senators for changes to the bill, one of which is before us now. It is interesting to note, however, that none of those changes were to the substantive portions of the bill. No one sought to amend one of the 178 provisions of the bill. However, they did raise concerns about the preamble.

We have had some discussion this afternoon about what exactly is the purpose of a preamble. There are those in the legal fraternity who would argue that a preamble has no meaning. There are others who believe, however — and certainly Senator Kinsella argued eloquently this afternoon — that a preamble can be inspiration. In other instances, a preamble simply sets the tone. That, I believe, is what is important about the preamble to this particular bill.

Honourable senators, there is no question that the honourable senators raised interesting issues in their discussion of the preamble. Senator Grafstein, as he did again this afternoon, proposed the deletion of the preamble in its entirety. Senator Joyal, on the other hand, proposed one motion containing four elements. He wanted a new paragraph to acknowledge Canada's enrichment due to bijuralism. He wanted to replace the second paragraph with text that avoids the expression "unique character of Quebec society." He wanted a third change in the introduction of a new paragraph to acknowledge that each legal system has developed in both official languages, and he wanted a fourth change, which also created a new paragraph, to acknowledge the particular role of the federal government in relation to the continuing use and development of both official languages in both legal traditions insofar as federal statutes are concerned. Senator Moore proposed to replace the words "a window on the world" with the words "enhanced opportunities worldwide."

The government has taken an interest in the suggestions of honourable senators and has reviewed each idea carefully. They have indicated to me that they are comfortable with four of the six proposals. However, they are not prepared, clearly, to make those amendments themselves, but if honourable senators made those amendments in this chamber, they would find those amendments acceptable. Let me, therefore, return to the specific motion of Senator Grafstein.

The government feels that Bill S-4 is a most important initiative. As in past initiatives in which the bill has begun with a preamble, they believe that we should not miss the opportunity to include a preamble in this particular bill. They believe that it gives us the opportunity to recite some of the context and the rationalization for harmonizing federal laws with the civil law of the Province of Quebec. For that reason, the government is unable to support Senator Grafstein's proposal to delete the preamble altogether.

Of the four ideas contained in Senator Joyal's amendment, the government looks with favour on three of them. The acknowledgement of Canada's enrichment due to bilingualism, the acknowledgement that each legal system has developed in both official languages, and the acknowledgement of the particular role of the federal government, would all be factual and constructive ideas and additions to the preamble and would do justice to the spirit of the preamble as presently drafted. However, Senator Joyal's objection in committee to the expression "unique character of Quebec society" is not shared by the government. In the view of the government, the second paragraph of the preamble in the bill is both descriptive of the context and factual.

The Senate itself used similar language in 1995 to express itself in a resolution concerning the distinctiveness of Quebec. The expression we are dealing with today is, in my view, synonymous. Moreover, the government does not share the concern that some senators have raised about the concept of preambles, that we are introducing socio-political concepts into a statute that do not belong there. As Senator Murray pointed out in the debate yesterday, many federal statutes have long preambles that describe the context of the initiative in question, and those preambles contain descriptive language that could not be described as precise legal language.

Let me refer to the Official Languages Act, for example, which says in its preamble, in the second paragraph:

AND WHEREAS the Constitution of Canada provides for full and equal access to Parliament, to the laws of Canada and to courts established by Parliament in both official languages...

Then, in the seventh paragraph, it reads:

AND WHEREAS the Government of Canada is committed to enhancing the vitality and supporting the development of English and French linguistic minority communities, as an integral part of the two official language communities of Canada, and to fostering full recognition and use of English and French in Canadian society...

• (1510)

The eighth paragraph of the Canadian Multiculturalism Act reads:

AND WHEREAS the Government of Canada recognizes diversity of Canadians as regards race, national or ethnic origin, colour and religion as a fundamental characteristic of Canadian society and is committed to a policy of multiculturalism designed to preserve and enhance the multicultural heritage of Canadians while working to achieve the equality of all Canadians in the economic, social, cultural and political life of Canada...

It is very inspirational.

Honourable senators, these preambles contain important statements of the ideas behind the legislative initiatives in question. They do not contain, strictly speaking, precise legal language. That the preamble in Bill S-4 may contain socio-political concepts is quite consistent with the practice of the Parliament of Canada in giving descriptive preambles to important legislative initiatives. For this reason, while the government is prepared to support, if senators desire, three of Senator Joyal's ideas, the government does not share his concern about the second paragraph.

As to Senator Moore's amendment in committee, which was defeated, if on the floor of this chamber we think that his language is better than the language offered by the drafters in the Department of Justice, then so be it — the Senate will decide to change that language.

Honourable senators, everyone agrees that this legislative initiative is important. There is overwhelming support for its substance. Insofar as the preamble is concerned, the government has listened to the concerns raised and has indicated its desire to be responsive and flexible, if that is what the Senate desires.

This bill was introduced in the last two sessions and unfortunately did not pass before either session ended. It is our hope that we who have been given the responsibility of first introduction of this bill — we are the first, if I may put it this way, second sober thought with respect to this piece of legislation — can move it forward to the other place so that it finds its way into force and effect.

I do understand that honourable senators, as Senator Grafstein did today, will move amendments during this debate. Let us deal with them in a thoughtful and timely fashion, but let us not in an inadvertent way derail the first important step to the harmonization of the federal law with the civil law of the province of Quebec.

**Senator Grafstein:** Honourable senators, the Leader of the Government in the Senate indicated that the preamble is really not legal so much as it is inspirational. Does she agree or disagree that the preamble is strictly related to this particular statute, or does it have a legal life beyond the statute?

**Senator Carstairs:** The preamble is part of this statute and lives with this statute.

**Senator Grafstein:** Honourable senators, I would point out that in his committee evidence, Mr. DeMontigny of the Department of Justice responded to a question from Senator Joyal by saying:

First, I absolutely agree with you that a preamble in one statute could, theoretically, be used for interpretation of another statute, although no example comes to mind. Usually, you would take the preamble of that statute and not adopt another preamble for another purpose in another context. In theory, you are correct. I will accept that.



**Senator Kinsella:** Honourable senators, I have a question for the minister. Is the government open to amending the first preambular paragraph by deleting the words "all Canadians are" and substituting the words "everyone is?" That first paragraph would then read, "WHEREAS everyone is entitled to..." In this way, we would be using the same language as in section 15 of the Charter to allay the fears of Quebec's multicultural communities, in which we find many landed immigrants who are not Canadian citizens and who we accept as having equal access to the law. I think that would assuage the concerns of some people.

**Senator Carstairs:** I thank the honourable senator for that question. I will take his suggestion immediately to the ministers involved in the drafting of this legislation and get a reflection back from them.

Let me be clear as to what I see as my role in this chamber. I want to reiterate what I said before. I not only see myself as bringing messages from cabinet to honourable senators, but bringing messages from this chamber back to the cabinet table. I will do that with pleasure.

**Senator Beaudoin:** Honourable senators, I wish to adjourn the debate.

**Senator Cools:** Honourable senators, I should like to ask Senator Carstairs a question. I thank her for her remarks.

In *Debates of the Senate* of December 7, 1995, Senator Fairbairn introduced a resolution for the consideration of this chamber. It was the famous resolution on Quebec's distinct society. The first sentence of that resolution, which appears at page 2452, stated:

Whereas the people of Quebec have expressed the desire for recognition of Quebec's distinct society;

Could Senator Carstairs share with us where and when it was that the people of Quebec ever expressed a desire for the recognition of Quebec's distinct society?

**Senator Carstairs:** Honourable senators, I am not sure exactly how this question relates to Bill S-4, but I think that the view expressed by the Government of Quebec throughout the entire Meech Lake debate was an example that they desired to be recognized as a distinct society.

**Senator Cools:** Senator Grafstein and other senators made reference to this resolution when they spoke. After all, this resolution took its life in the aftermath of the referendum in Quebec some years ago. My recollection is that the people of Quebec voted on the Charlottetown accord in 1992. If anything, the people of Quebec at that time voted very clearly against a distinct society clause.

**Senator Carstairs:** I think that is a bit like saying the people of British Columbia voted against an elected Senate.

On motion of Senator Beaudoin, debate adjourned.

## CONFERENCE OF MENNONITES IN CANADA

### PRIVATE BILL TO AMEND ACT OF INCORPORATION— SECOND READING

**Hon. Richard H. Kroft** moved the second reading of Bill S-25, to amend the Act of incorporation of the Conference of Mennonites in Canada.—(*Honourable Senator Kroft*).

He said: Honourable senators, this bill, except for some technical changes in its presentation, is substantially the same as a bill introduced in the last session of Parliament by the Honourable Sharon Carstairs. In that session, it was known as Bill S-28. That bill, however, did not progress beyond the second reading stage. It died on the Order Paper when Parliament was dissolved on October 22, 2000.

In her speech on December 19, 2000, in support of second reading of Bill S-28, Senator Carstairs explained who the petitioner was, described the bill and said a few words about each of the bill's various clauses. Her comments can be found on pages 1939 and 1940 of the *Debates of the Senate* of that date.

It is, therefore, not my intention to repeat everything that Senator Carstairs said. However, for the benefit of those senators who are new to this chamber and to refresh the memory of other senators, I wish to draw your attention to a few pertinent facts regarding the petitioner and the bill.

The Conference of Mennonites in Canada was founded in 1902 and was incorporated by a private act of Parliament in 1947. It was composed largely of Mennonites who immigrated to Canada in the 1870s and again in the 1920s and the 1940s. Today, it is composed of approximately 260 congregations working in partnership with provincial and regional conferences in Canada. It consists of over 35,000 individual members from a wide range of ethnic groups, such as Chinese, Vietnamese, Laotian, Cambodian, Taiwanese, French, Spanish and German.

Honourable senators, the purpose of this bill, like its predecessor in the last Parliament, is to update and revise the corporation's original 1947 act of incorporation. It proposes to do this in four ways: first, by changing the corporation's name to that of the "Mennonite Church Canada"; second, by making certain revisions to the corporation's constitution, including its objects and powers; third, by removing certain restrictions on the holding and disposition of real property; and, fourth, by permitting the corporation to carry out its objects and exercise its powers outside Canada.

Honourable senators, I am pleased to be sponsoring this bill. The Mennonite community has a long history in Manitoba and has a proud and distinguished place in the religious, educational, cultural and business life of our province. Their contribution to the industrial development of Manitoba has been outstanding and continues to grow. Their commitment to fundamental values is a positive force at home, across Canada and around the world. The Mennonite community is an outstanding example of how immigrants bring their distinct qualities, character and beliefs to the building of our nation.



Honourable senators, I have moved this bill on second reading and now propose that it be sent to the Standing Senate Committee on Legal and Constitutional Affairs for detailed consideration.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, we will not oppose this bill, but I think that for the record it is important, particularly for new senators, to understand why a bill such as this is before this house.

This is a petition, now presented in the form of a bill, for a federal act of incorporation making an organization a corporation sole. It is generally done at the administrative level in the provinces rather than by an act of Parliament. Under the Companies Act of most provinces, an administrative office would be dealing with this issue.

It might fall under a historical category of years past, similar to when decrees for divorce in Canada required an act, which was dealt with by the Senate. This process is of that same vintage. I know that some honourable senators have raised in the past, when bills like this have been brought forward, that we should change this process. However, this is our process, and we feel that this particular group, as other groups, ought not be penalized because some of us think that there should be an administrative process to deal with matters of this kind. We would encourage honourable senators to reflect upon the need to make that kind of change and to do so in due course.

In the meantime, honourable senators, we will support the bill being adopted at second reading and referred to the Standing Senate Committee on Legal and Constitutional Affairs for examination.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Kroft, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

## DEFERRED MAINTENANCE COSTS IN CANADIAN POST-SECONDARY INSTITUTIONS

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Moore calling the attention of the Senate to the

emerging issue of deferred maintenance costs in Canada's post-secondary institutions.—(*Honourable Senator Callbeck*).

**Hon. Catherine S. Callbeck:** Honourable senators, I rise today to participate in this important inquiry brought forward by Senator Moore. I want to thank the honourable senator for bringing this serious matter to the attention of the Senate.

Our universities are in trouble. Recently studies have confirmed fears that on a Canada-wide basis, the physical plant infrastructure of our universities is crumbling. Accumulated deferred maintenance, or ADM, has been a growing problem for years but now has reached a point where it can no longer be ignored.

I do not wish to repeat all the facts and figures earlier provided by Senator Moore and Senator DeWare, but I do wish to remind senators of the seriousness of the situation.

The sum of \$3.6 billion is needed to eliminate the accumulated deferred maintenance in post-secondary institutions in this country. That works out to over \$5,500 per full-time student. Of the total amount, over \$1 billion of the ADM requirement is considered urgent. That means that if these conditions are not immediately attended to, further deterioration and increased costs will result.

Honourable senators, these figures are reported in the latest study on deteriorating university infrastructure entitled "A Point of No Return: the Urgent Need for Infrastructure Renewal at Canadian Universities."

• (1530)

The report was compiled last year by the Canadian Association of University Business Officers, and was considered to accurately reflect the ADM problem. As the report states, the average university building in Canada is 32 years old, while the average life cycle of its components and systems is about 23 years. Therefore, as most buildings and physical systems have now surpassed their life span by 10 years, we see the need for major repairs.

The following contribute to the infrastructure problem: decreasing government funding; demands for new space due to growth in university programs, research and enrolment; the need to comply with new codes and regulations; the need to keep pace with advancing technology; and the lack of attention given to maintenance and renewal in comparison to new building projects. Enrolment is expected to dramatically increase over the next decade and place further demands on existing physical plants.

The result is a serious national problem. Graduate level research cannot be carried out optimally in deteriorating facilities. Breakdowns in the physical plant can be seriously disruptive and can ruin entire experiments.

Though the government has been quite committed to funding research across Canada, the cart should not be put before the horse: in other words, we need to ensure that safe, modern facilities exist to allow researchers to make the best possible use of the research dollars.

Further, the problem is not limited to laboratories and researchers. Daily classroom activity and lecturing can be seriously disrupted by institutional breakdowns such as problems with heating and ventilation, and the resulting disturbance from frequent maintenance and temporary repairs. With classroom space at a premium, it is often difficult to find suitable rooms to relocate classes.

Though accumulated deferred maintenance is a problem that plagues the entire country, I can speak most knowingly about the University of Prince Edward Island — the only university in my home province. UPEI, represented by Vice-President of Finance Neil Henry, was an active participant in the formulating of the accumulated deferred maintenance study. I was startled to learn that the situation at the University of Prince Edward Island is among the worst in the country. Of the 22 buildings that comprise the campus, three have been revealed to be at the end of their useful lives. They are at a stage where only major building restoration can make them safe and adequate for use. The small Island university, with a student body of 2,500, is saddled with \$20 million of deferred maintenance costs.

The provincial government assists UPEI with capital grants, but the university must still borrow money. However, the school's borrowing capacity is limited because any debt must be funded out of its operating budget. Current annual maintenance expenditures do not keep up with the annual deterioration.

Related to the problem of deteriorating infrastructure is the need for increased space. The pressures of rising enrolment and rising levels of research funding have put classrooms and laboratories at a premium. Providers of research funding, whether federal or private sector, often assume that the university has the lab space to carry out the contemplated research. However, the University of Prince Edward Island and many other institutions have effectively run out of lab space altogether.

The University of Prince Edward Island has estimated that it will require approximately 43,000 square feet of new laboratory

space. As a recent Speech from the Throne reveals, the government is committed to enhancing research to better situate the country in the global knowledge-based economy. If this aim is to be fulfilled, there can be no overlooking the fact that adequate infrastructure is a necessary prerequisite to putting these research dollars to good use.

Honourable senators, the situation at the University of Prince Edward Island is just a snapshot of the bigger problem that is plaguing virtually every university in this country. Though the situation is most serious in Atlantic Canada, the entire country is feeling the pressure of a decaying university infrastructure.

The problem will not disappear on its own. If left unaddressed, we will soon see increasing numbers of students choosing their schools outside the country, where they might be better able to obtain academic needs. It is not a matter of "if" we can come up with the funding; it is a matter of "when."

A federal-provincial infrastructure program must be started now with a view to eliminating deferred maintenance over the next number of years. Subsequent to the eradication of accumulated deferred maintenance, annual programs should be put in place to ensure that we do not find ourselves in this situation again.

I encourage all honourable senators to embrace this issue and familiarize themselves with the status of their local universities.

On motion of Senator DeWare, for Senator Meighen, debate adjourned.

[Translation]

## BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, on Wednesdays, we try to finish the business of the Senate as close to 3:30 p.m. as possible to allow our committees to sit. I ask that all items in the Orders of the Day and on the Order Paper stand in their present order.

The Senate adjourned until Thursday, April 5, 2001, at 1:30 p.m.

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CANADA

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37th PARLIAMENT

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NUMBER 26

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OFFICIAL REPORT  
(HANSARD)

Thursday, April 5, 2001

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THE HONOURABLE DAN HAYS  
SPEAKER

GOVERNMENT

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## THE SENATE

Thursday, April 5, 2001

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

[Translation]

### SENATORS' STATEMENTS

#### QUEBEC

THE RIGHT OF WOMEN TO VOTE—  
CONTRIBUTION OF ADÉLARD GODBOUT

**Hon. Lucie Pépin:** Honourable senators, today I should like to pay tribute to Adélard Godbout, Premier of Quebec in 1936 and from 1939 to 1944.

The contribution of Mr. Godbout merits our attention because of the major reforms that took place under his leadership. His determination and courage are what make it possible for the women of Quebec to commemorate the 41st anniversary of their obtaining the right to vote, on April 11 of this year. The true contribution of Adélard Godbout has recently been hotly debated. I am not in the least anxious to get involved in the polemics, but wish only to focus on his many accomplishments.

Joseph Adélard Godbout was born on September 24, 1892 at Saint-Éloi, Quebec. He followed in his father's footsteps as an agronomist. In 1929, he was elected to the Legislative Assembly of Quebec to represent the district of l'Islet. He was regularly returned until 1944.

His career quickly skyrocketed, in part because of his devotion to his work and his serious approach. He was appointed Minister of Agriculture in November 1930, and then in June 1936 was called upon to succeed Louis-Alexandre Taschereau as leader of the Quebec Liberal Party and premier of the province.

His five years at the head of the Quebec government were distinguished by a number of significant reforms, particularly in the areas of agriculture, education, labour relations, natural resources and democracy.

It is to him that we owe such things as the creation of Hydro-Québec, compulsory school attendance free of charge for children between the ages of 6 and 14 years, and the modernization of agriculture. As well, during his premiership, the women of Quebec gained the right to vote in 1940, as well as the right to run in provincial elections.

From 1926 until they received the right to vote, women witnessed the defeat of some fifteen bills in this regard. Adélard Godbout, to his credit, followed the initiative from the suffragist movement to women's being given the right to vote, despite the

strong opposition the bill raised in the conservative clerical establishment of the day.

Adélard Godbout had to fight hard to keep his bill alive. His desire to go the full distance led him to threaten the clergy with resignation if they did not stop their campaign against the right to vote for women. His fierce determination succeeded in quashing this opposition.

Adélard Godbout was far-sighted in recognizing with this intervention the obvious equality of men and women. I cannot resist citing a part of his speech:

The conditions in which we live make women the equal of men. They often have the same duties and obligations as men, why deny them the same rights, especially when many of the questions we must deal with are more within their domain than our own.

This statement, which, today, may appear rather banal, was ahead of its time then. Bill 18 was finally passed on April 11, 1940 by the Legislative Assembly and subsequently on April 25 of that year by the Executive Council. Quebec women could then vote and be elected to office, a right they would use for the first time on August 8, 1944.

Subsequently, in 1941, this right to vote and to run for office was extended to the municipal level, and Quebec women were allowed to practice law.

#### THE LATE ROBERT GAUTHIER

##### TRIBUTE

**Hon. Marie-P. Poulin:** Honourable senators, last week, Canada lost one of its great builders. Robert Gauthier died at the age of 99. For nearly 75 years, this man worked enthusiastically in the service of life in French in Ontario. His enthusiasm took various forms, at different times, according to needs, priorities and contexts.

Here is one example among many. In 1950, I was in one of the first French-language pre-school classes in Ontario, a kindergarten located in the Sainte-Anne parish hall, in Sudbury. I can still hear the calm and low voice of my father, Alphonse Charette, telling me: "This morning, if you can go to school and learn to read, write and count in French, it is thanks to Robert Gauthier and to all the work that he did with us parents, teachers and business people."

Honourable senators, the first French-language kindergarten in Ontario is but one of the many things we owe to Robert Gauthier's vision and hard work. The list of his lasting achievements is a long one. It includes associations, educational institutions, training tools and events.



Last Friday, at his funeral, Monique Cousineau said words that all those who were present will remember. She was able to convey the pride, creativity, dedication, insight, charming personality and humour of Robert Gauthier, a great Canadian.

[English]

• (1340)

## THE HONOURABLE HERBERT O. SPARROW

CONGRATULATIONS ON BEING INDUCTED INTO THE  
SASKATCHEWAN AGRICULTURAL HALL OF FAME

**Hon. Leonard J. Gustafson:** Honourable senators, I rise today to pay tribute to and to compliment a fellow senator from Saskatchewan on his induction into the Saskatchewan Agricultural Hall of Fame. Senator Sparrow is our senior senator in this place.

**Hon. Senators:** Hear, hear!

**Senator Gustafson:** I could not put it better than how it is written in the *News-Optimist* of the Battlefords:

Senator Herbert O. Sparrow, of North Battleford, world renown as a strong advocate for soil conservation, is among six people named to the Saskatchewan Agricultural Hall of Fame.

He will be inducted August 5 at the Hall's home at the Western Development Museum in Saskatoon.

Sen. Sparrow was born and educated in Saskatoon and later moved to North Battleford, where he is a businessman and a farmer/rancher.

He was appointed to the Senate at the age of 38, and is the longest serving senator in Canada. In the Senate he established his reputation as an advocate of preserving the environment.

While chair of the Senate's agricultural, fisheries and forestry committee, he helped write the book *Soil at Risk, Canada's Eroding Future*.

He was founder and first president of Soil Conservation Canada.

Out of this group came the Save our Soils program, which focuses on grassing waterways, seeding marginal and saline soils to forage and reducing tillage.

Sen. Sparrow addressed the United Nations' Environmental Program in Australia.

He is an honorary life member of the Agricultural Institute of Canada, and of the Soil Science Society of Canada.

This is a long article, and the comments in it are well-deserved. I will have it circulated to all honourable senators. Senator Sparrow is a most deserving inductee.

**Hon. Senators:** Hear, hear!

**Senator Gustafson:** Honourable senators, I believe that no one in Canada has worked harder on these issues than Senator Sparrow. He has defended farm issues, and perhaps at times some would say too forcefully, but he has always stood up for farmers and done his best to help agriculture in Canada. I am very pleased that we honour him today in the Senate.

**Hon. Senators:** Hear, hear!

[Later]

**Hon. Herbert O. Sparrow:** Honourable senators, I want to express my appreciation to Senator Gustafson for his kind remarks. It took me some time to realize that he was really talking about me, but I thank him for those remarks.

I was speaking at a meeting not long ago, and I was introduced as "Senator Swallow," that I was from Alberta, that I was in the oil business, and that I made \$250,000 last year. I had to get up and correct the speaker, and tell them that my name was not "Swallow," but Sparrow. I am not from Alberta; I am from Saskatchewan. I am not in the oil business; I am a farmer. I did not make \$250,000 last year; I lost \$250,000.

I want to state further that sometimes when you feel like a big-time operator, you are brought back to reality. When I was introduced at a meeting as being a rancher and farmer, the fellow sitting next to me said, "You are a farmer?" I said, "Yes." He said, "Are you a big farmer?" I said, "Well, when I get in my half-ton truck in the morning, it takes me until noon to get to the other side of my farm." And he said, "I know what you mean. I used to have a truck like that, too."

In the extra 30 seconds I have left —

**The Hon. the Speaker:** I am sorry, Senator Sparrow.

**Hon. Senators:** More! More!

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** I request from honourable senators leave for Senator Sparrow to continue.

**Hon. Senators:** Hear, hear!

**Senator Sparrow:** Thank you very much. What I do want to say is that the Senate, during my period of time here, and certainly before my time, has done a lot of important work on behalf of the Canadian people. It has looked at the nation and said, "Where are there injustices? Where those injustices are, we will try to alleviate them and look after them."

That was true in projects involving aging, pensions, child care and numerous other matters. I am sure that the Senate will continue to do that work.

I should like to refer particularly to the agricultural community in this time of crisis. The Standing Senate Committee on Agriculture and Forestry and the Senate as a whole have been very supportive of the agricultural industry across this country. The Senate and the Senate Agriculture Committee is being recognized as bringing the needs of the agriculture community to the forefront of the nation. Certainly, the Agriculture Committee, now chaired by Senator Gustafson and by others before him, has done this job. I would like to thank the Senate on behalf of the agricultural community for pursuing this very serious problem.

**Hon. Senators:** Hear, hear!

[Translation]

### GUGLIELMO MARCONI

ONE HUNDREDTH ANNIVERSARY OF FIRST TRANSATLANTIC  
WIRELESS COMMUNICATION

**Hon. Marisa Ferretti Barth:** Honourable senators, Canadian inventions are known throughout the world. Over the years, our ability to transmit information over large distances has played a critical role.

This year, on December 12, we will celebrate the 100th anniversary of an invention of Guglielmo Marconi, born in Bologna, Italy. To this day, I had not realized that, upon his return to Italy, Marconi was appointed marquis and senator, which means he was a colleague of us all.

[English]

I am well aware of Canada's strong interest in the celebration of this event. Italy shares this interest, not only because of the historical importance of these inventions but also because they are examples of close cooperation between Italy and Canada.

I apologize for my English.

[Translation]

Needless to say, Canada's contribution was vital in helping this invention, which changed the world forever, see the light of day.

When he was only 21, our young physicist discovered a transmitter capable of sending a radio signals over a short distance. At first, Marconi's invention produced little enthusiasm in Italy: The Italian minister at the time even thought that the invention was not appropriate to telecommunications.

In 1897, after patenting his system in England, the country in which his mother, whose ancestors were Irish, was born, he founded a private company to develop his invention. Transmission distances became longer and longer. Radio-telegraphy had become a reality.

After a storm destroyed his experimental station in the United States, Marconi moved to Canada. In 1901, the great Italian physicist and inventor, Guglielmo Marconi, successfully effected the first transatlantic wireless communication between England

and Newfoundland, where he had installed a receiver at the Signal Hill station, not far from St. John's.

For this achievement, he was awarded the Nobel Prize for physics in 1909. The world will long remember the tragedy of the *Titanic*, when an SOS was radioed, saving 705 passengers.

Honourable senators, I will be pleased to tell you about the celebrations surrounding these historic events in due course.

[English]

### WORLD HEALTH DAY, 2001

**Hon. Wilbert J. Keon:** Honourable senators, World Health Day 2001, declared by the World Health Organization, will be celebrated on April 7 worldwide. A new theme is selected each year to highlight public health issues of concern. World Health Day 2001, a global advocacy of awareness-raising activity dedicated to mental health issues, has the prime objective to raise awareness of mental health problems and dispel common myths to reduce stigma. It is an opportunity to impact public opinion and stimulate debate on how to improve the current condition of mental health around the world.

We are thankful that international attention is increasing for mental health issues. Mental health is relevant to all. No country and no person is immune to mental health disorders, and their impact in psychological, social and economic terms is quite high. The economic burden of direct and indirect cost is enormous.

Mental disorders, often considered the invisible disabilities, are real, diagnosable, common and universal. Some 400 million people in the world, and close to 6 million Canadians, suffer from mental or neurological disorders. That is one in five. Women aged 15 and older are almost 1.5 times more likely to experience mental disorders.

Consider the homeless person you may have passed on the street, or the single mother with a young autistic child or the senior who is chronically depressed and isolated. Mental health problems cannot be resolved without clear national policies, research and infrastructure investments, programs on the promotion of mental health, and the control and understanding of mental disorders.

Please join me in supporting this advocacy group.

• (1350)

### ROUTINE PROCEEDINGS

#### PATENT ACT

BILL TO AMEND—REPORT OF COMMITTEE

**Hon. David Tkachuk,** Deputy Chairman of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:



Thursday, April 5, 2001

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

### THIRD REPORT

Your Committee, to which was referred Bill S-17, An Act to Amend the Patent Act, has, in obedience to the Order of Reference of Monday, March 12, 2001, examined the said Bill and now reports the same without amendment, but with observations, which are appended to this report.

Respectfully submitted,

E. LEO KOLBER  
Chairman

(For text of observations, see today's Journals of the Senate, Appendix "A," p. 325.)

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Robichaud, bill placed on Orders of the Day for third reading at the next sitting of the Senate.

### CANADA BUSINESS CORPORATIONS ACT CANADA COOPERATIVES ACT

#### BILL TO AMEND—REPORT OF COMMITTEE

**Hon. David Tkachuk,** Deputy Chairman of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Thursday, April 5, 2001

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

### FOURTH REPORT

Your Committee, to which was referred Bill S-11, An Act to Amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence, has, in obedience to the Order of Reference of Wednesday, February 21, 2001, examined the said Bill and now reports the same with the following amendments:

1. *Page 1, long title:* Replace the long title with the following:

"An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts".

2. *Page 23, clause 42:* Replace lines 1 to 6 with the following:

"113. (1) A corporation shall, within fifteen days after

(a) a change is made among its directors, or

(b) it receives a notice of change of address of a director referred to in subsection (1.1),

send to the Director a notice, in the form that the Director fixes, setting out the change, and the Director shall file the notice.

(1.1) A director shall, within fifteen days after changing his or her address, send the corporation a notice of that change."

3. *Page 38, clause 55:*

(a) Replace line 20 with the following:

"(4) Unless the by-laws otherwise provide, any person"; and

(b) Replace line 27 with the following:

"during the meeting, if the corporation makes available such a communication facility. A person participating in".

4. *Pages 42 and 43, clause 59:* Replace lines 43 and 44 on page 42 and lines 1 to 3 on page 43 with the following:

"may be, notify in writing the person submitting the proposal of its intention to omit the proposal from the management proxy circular and of the reasons for the refusal."

5. *Page 44, clause 61:* Replace lines 3 to 7 with the following:

"(3) Despite subsection (1), unless the by-laws otherwise provide, any vote referred to in subsection (1) may be held, in accordance with the regulations, if any, entirely by means of a telephonic, electronic or other communication facility, if the corporation makes available such a communication facility.

(4) Unless the by-laws otherwise provide, any person participating in a meeting of shareholders under subsection 132(4) or (5) and entitled to vote at that meeting may vote, in accordance with the regulations, if any, by means of the telephonic, electronic or other communication facility that the corporation has made available for that purpose."

6. *Page 48, clause 68:* Replace line 10 with the following:

"(b) has fifty or fewer shareholders en-".

7. *Pages 58 and 59, clause 97:* Replace lines 29 to 39 on page 58 and lines 1 to 8 on page 59 with the following:

"193. A corporation may carry out a going-private transaction. However, if there are any applicable provincial securities laws, a corporation may not carry out a going-private transaction unless the corporation complies with those laws."



8. *Page 63, clause 100:* Replace lines 27 to 32 with the following:

“shareholder may

(a) within ninety days after the date of termination of the take-over bid, or

(b) if the shareholder did not receive an offer pursuant to the take-over bid, within ninety days after the later of

(i) the date of termination of the take-over bid, and

(ii) the date on which the shareholder learned of the take-over bid,

require the offeror to acquire those shares.”.

9. *Pages 64 and 65, clause 102:*

(a) Replace lines 34 to 37 on page 64 with the following:

“including the restoration of any rights and privileges whether”;

(b) Replace lines 12 to 14 on page 65 with the following:

“(c) a person who, although at the time of”; and

(c) Replace line 19 on page 65 with the following:

“(d) a trustee in bankruptcy for the dissolved”.

10. *Page 93, clause 148:*

(a) Replace line 3 with the following:

“(3) Unless the by-laws provide otherwise, a member or”; and

(b) Replace line 10 with the following:

“ing, if the cooperative makes available such a communication facility.”.

11. *Page 97, clause 153:*

(a) Replace line 3 with the following:

“section 52, the cooperative must, within the”;

(b) Replace line 7 with the following:

“tion 58(2.4), as the case may be, notify in writing”; and

(c) Replace line 10 with the following:

“and of the reasons”.

12. *Page 97, clause 154:* Replace lines 20 to 24 with the following:

“(3) Despite subsection (1), unless the by-laws provide otherwise, any vote referred to in subsection (1) may be held, in accordance with the regulations, if any, entirely by means of a telephonic, electronic or other communication facility, if the cooperative makes available such a communication facility.

(4) Unless the by-laws otherwise provide, a member or shareholder participating in a meeting of the cooperative under subsection 48(3) or (3.1) and entitled to vote at that meeting may vote, in accordance with the regulations, if any, by means of the telephonic, electronic or other communication facility that the cooperative has made available for that purpose.”.

13. *Page 98, new clause 160.1:* Add after line 47 the following:

**“160.1 Section 91 of the Act is replaced by the following:**

**91.** (1) A cooperative must, within fifteen days after

(a) a change is made among its directors, or

(b) it receives a notice of change of address of a director referred to in subsection (2),

send to the Director a notice, in the form that the Director fixes, setting out the change.

(2) A director must, within fifteen days after changing his or her address, send the cooperative a notice of that change.

(3) Any interested person, or the Director, may apply to a court for an order to require a cooperative to comply with subsection (1), and the court may so order and make any further order it thinks fit.”.

14. *Page 108, new clause 184.1:* Add after line 34 the following:

**“184.1 Paragraph 165(2)(b) of the Act is replaced by the following:**

(b) it has fifty or fewer shareholders entitled to vote at a meeting, two or more joint holders being counted as one shareholder.”.

15. *Page 116, new clause 192.1:* Add after line 18 the following:

**“192.1 Subsection 176(1) of the Act is replaced by the following:**

**176.** (1) If a shareholder holding shares of a distributing cooperative does not receive a notice under this Part, the shareholder may

(a) within ninety days after the date of the end of the take-over bid, or

(b) if the shareholder did not receive an offer pursuant to the take-over bid, within ninety days after the later of

(i) the date of the end of the take-over bid, and

(ii) the date on which the shareholder learned of the take-over bid,

require the offeror to acquire those shares.”.

**16.** Pages 119 and 120, clause 206:

(a) Replace line 37 on page 119 with the following:

“of the Act before paragraph (b) is replaced”;

(b) Add after line 46 on page 119 the following:

“(a) restored to its previous position in law, including the restoration of any rights and privileges whether arising before its dissolution or after its dissolution and before its revival; and”; and

(c) Add after line 6 on page 120 the following:

“(8) In this section, “interested person” includes

(a) a member, a shareholder, a director, an officer, an employee and a creditor of the dissolved cooperative;

(b) a person who has a contractual relationship with the dissolved cooperative; and

(c) a trustee in bankruptcy for the dissolved cooperative.”.

**17.** Page 136, new clauses 230.1, 230.2, 230.3 and 230.4:  
Add after line 24 the following:

*“Air Canada Public Participation Act*

**230.1** (1) Subsections 6(4) of the *Air Canada Public Participation Act* is repealed.

(2) The portion of subsection 6(5) of the Act before paragraph (a) is replaced by the following:

(5) For the purposes of this section,

(3) Subsection 6(5) of the Act is amended by adding the word “and” at the end of paragraph (a) and by repealing paragraph (b).

*Canada Development Corporation Reorganization Act*

**230.2** (1) Subsections 5(6) of the *Canada Development Corporation Reorganization Act* is repealed.

(2) The portion of subsection 5(7) of the Act before paragraph (a) is replaced by the following:

(7) For the purposes of this section,

(3) Subsection 5(7) of the Act is amended by adding the word “and” at the end of paragraph (a) and by repealing paragraph (b).

*CN Commercialization Act*

**230.3** (1) Subsections 8(4) of the *CN Commercialisation Act* is repealed.

(2) The portion of subsection 8(5) of the Act before paragraph (a) is replaced by the following:

(5) For the purposes of this section,

(3) Subsection 8(5) of the Act is amended by adding the word “and” at the end of paragraph (a) and by repealing paragraph (b).

*Nordion and Theratronics Divestiture Authorization Act*

**230.4** (1) Subsections 6(4) of the *Nordion Theratronics Divestiture Authorization Act* is repealed.

(2) The portion of subsection 6(5) of the Act before paragraph (a) is replaced by the following:

(5) For the purposes of this section,

(3) Subsection 6(5) of the Act is amended by adding the word “and” at the end of paragraph (a) and by repealing paragraph (b).”.

Respectfully submitted,

E. LEO KOLBER  
Chairman

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Tkachuk, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

## STUDY ON AGRICULTURE AND AGRI-FOOD INDUSTRY

BUDGET AND REQUEST FOR AUTHORITY TO TRAVEL  
AND ENGAGE SERVICES—REPORT OF AGRICULTURE  
AND FORESTRY COMMITTEE PRESENTED

**Hon. Leonard J. Gustafson,** Chair of the Standing Senate Committee on Agriculture and Forestry, presented the following report:

Thursday, April 5, 2001

The Standing Senate Committee on Agriculture and Forestry has the honour to present its

## SECOND REPORT

Your Committee, which was authorized by the Senate on March 20, 2001 to examine international trade in agricultural and agri-food products, and short-term and long-term measures for the health of the agricultural and the agri-food industry in all regions of Canada, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of the Committee's examination and to adjourn from place to place within Canada and to travel outside Canada for the purpose of such examination.

Pursuant to Section 2:07 of the *Procedural Guidelines for the Financial Operations of Senate Committees*, the Budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report of said Committee are appended to this report.

Respectfully submitted,

LEONARD J. GUSTAFSON  
*Chair*

(For text of appendix, see today's Journals of the Senate, Appendix "B", p. 327.)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

**Senator Gustafson:** With leave of the Senate, and notwithstanding rule 58(1)(g), I move that the report be adopted now.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, might it not be a better practice if the report was now circulated and, at the end of the proceedings of the day, leave was requested to revert to the matter? That leave would either be granted then or not granted, based upon some knowledge. We do not want to hold up this matter, but it would be helpful if we knew what we were dealing with.

**Senator Robichaud:** Later this day.

**The Hon. the Speaker:** Senator Gustafson, as to your request for leave, the suggestion has been made, and I will put it to honourable senators, that this matter be placed on the Orders of the Day for consideration later this day, under the appropriate heading.

Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

Motion agreed to and report placed on the Orders of the Day for consideration later this day.

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

### FOURTH REPORT OF COMMITTEE PRESENTED

**Hon. Richard H. Kroft,** Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Thursday, April 5, 2001

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

### FOURTH REPORT

Your Committee recommends that the following funds be released for fiscal year 2001-2002.

#### Social Affairs, Science and Technology (Legislation)

Professional and Other Services	\$ 5,000
Transport and Communications	0
Other Expenditures	0
<b>Total</b>	<b>\$ 5,000</b>

#### Transport and Communications (Legislation)

Professional and Other Services	\$ 24,500
Transport and Communications	700
Other Expenditures	700
<b>Total</b>	<b>\$ 25,900</b>

#### Energy, the Environment and Natural Resources (Legislation)

Professional and Other Services	\$ 9,500
Transport and Communications	500
Other Expenditures	1,000
<b>Total</b>	<b>\$ 11,000</b>

Respectfully submitted,

RICHARD H. KROFT  
*Chair*

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Kroft, report placed on the Orders of the Day for consideration at the next sitting of the Senate.



[Translation]

Thursday, April 5, 2001

## SCRUTINY OF REGULATIONS

BUDGET—REPORT “B” OF JOINT COMMITTEE PRESENTED

**Hon. Céline Hervieux-Payette**, Joint Chair of the Standing Joint Committee for the Scrutiny of Regulations, presented the following report:

Thursday, April 5, 2001

The Standing Joint Committee for the Scrutiny of Regulations has the honour to present its

### FIRST REPORT—“B” (presented only to the Senate)

Your Committee, which is authorized by section 19 of the *Statutory Instruments Act*, R.S.C. 1985, c. S-22, to review and scrutinize statutory instruments, now requests approval of funds for 2001-2002.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

CÉLINE HERVIEUX-PAYETTE, P.C.  
Joint Chair

(For text of appendix, see today's Journals of the Senate, Appendix “C”, p. 329.)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Hervieux-Payette, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[English]

## STUDY ON ECONOMIC DEVELOPMENT OF NATIONAL PARKS IN NORTH

BUDGET AND REQUEST FOR AUTHORITY  
TO ENGAGE SERVICES AND TRAVEL—  
REPORT OF ABORIGINAL PEOPLES COMMITTEE PRESENTED

**Hon. Thelma J. Chalifoux**, Chair of the Standing Senate Committee on Aboriginal Peoples, presented the following report:

The Standing Senate Committee on Aboriginal Peoples has the honour to present its

### SECOND REPORT

Your Committee, which was authorized by the Senate on Monday, March 12, 2001, to examine and report upon the opportunities to expand economic development, including tourism and employment, associated with national parks in Northern Canada, within the parameters of existing comprehensive land claim and associated agreements with Aboriginal Peoples and in accordance with the principles of the *National Parks Act*, and to present its final report no later than September 28, 2001, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary, and to adjourn from place to place in Canada, for the purpose of its examination.

Pursuant to Section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

THELMA J. CHALIFOUX  
Chair

(For text of appendix, see today's Journals of the Senate, Appendix “D”, p. 337.)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Chalifoux, with leave of the Senate and notwithstanding rule 58(1)(g), report placed on the Orders of the Day for consideration later this day.

## EMPLOYMENT INSURANCE ACT EMPLOYMENT INSURANCE (FISHING) REGULATIONS

BILL TO AMEND—FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-2, to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

[Translation]

## INTER-PARLIAMENTARY FORUM OF THE AMERICAS

### REPORT ON INAUGURAL MEETING TABLED

**Hon. Céline Hervieux-Payette:** Honourable senators, I have the honour to table in both official languages, as well as in Spanish and Portuguese, the report of the inaugural meeting of the Inter-Parliamentary Forum of the Americas, which was held in Ottawa, March 7 through March 9, 2001. Since our Speaker took part in the opening ceremony, he knows the inaugural meeting was held at the invitation of the Parliament of Canada. I had the honour to head the Canadian delegation, while our colleague Bill Graham from the other place chaired the meeting. Honourable senators, I am pleased to report to you that the meeting was a great success. We were successful in creating a true forum here in Ottawa.

[English]

**The Hon. the Speaker:** I must advise Senator Hervieux-Payette that under this item on the Order Paper, senators are only entitled to table their reports, not to speak to them.

## QUESTION PERIOD

### HEALTH

#### COMMISSION ON THE FUTURE OF HEALTH CARE— REQUEST FOR SCHEDULE OF ISSUES TO BE REVIEWED

**Hon. Wilbert J. Keon:** Honourable senators, I have a question for the Leader of the Government in the Senate.

With the announcement yesterday of the Commission on the Future of Health Care, very capably headed by Mr. Roy Romanow, I tried to monitor the news last night because this subject is of tremendous interest to me. I noticed that, once again, the momentum of the debate in the media is swinging to how much money we will throw at this issue, who will pay the bills and what arrangements will be made. I had hoped that this time around we would be able to see this issue through a different paradigm based on population health, preventive measures and therapeutic measures, the outcomes of which can be measured scientifically. The goal, of course, is to close the loop and reinstitute appropriate preventive and therapeutic measures.

The reason for my question is that there may still be time for input from the Leader of the Government in the Senate. Could a

schedule be laid out this time around whereby sufficient time really would be devoted to a look at the situation from the top?

• (1410)

I can appreciate the pressure that Mr. Romanow will come under from all of the stakeholders when he begins holding his hearings, and so forth. He then has to meet his deadlines. Once again, I am afraid we may drift to the same bottom line.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for his question. He is quite right. If one were to look only at the media reports, it would be once again a debate on how much money is needed and who will pay the bill. That would indeed be a very missed opportunity.

I have been given assurances that this will be a very broadly based study. The commission will look at the whole situation through a different lens, and issues such as health outcomes and measurement will be an important part of that study. However, if there is, in fact, a schedule of the exact types of topics they are to engage in, then I will provide that to the honourable senator at the first opportunity.

#### COMMISSION ON THE FUTURE OF HEALTH CARE— TERMS OF REFERENCE

**Hon. Lowell Murray:** Honourable senators, I have a supplementary question. I should perhaps know the answer to this. Are there terms of reference? Have they been tabled? Under what statute has this study been decided? Is it a royal commission? Are there other members on the commission?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not have the answers to all of Senator Murray's questions. However, it has not been designated a royal commission; it has been designated as a commission. I am not sure what difference there is between a royal commission and a commission, but the word "royal" does not precede, for whatever reason.

As to a statute, this initiative has been undertaken by the Prime Minister directly, because the commission will report directly to him, so it comes under the authority of the Prime Minister's Office.

As to the specific terms of reference, I do not have any, other than what was included in the press release. I am given to understand that the mandate is sufficiently broad that Mr. Romanow can, in fact, go wherever he chooses in his research mode.

**Senator Murray:** I take it from the leader's answer that it is in the nature of a task force appointed by the Prime Minister, rather than a commission appointed by Order in Council. Does the honourable leader confirm that?

**Senator Carstairs:** That is certainly my understanding.



COMMISSION ON THE FUTURE OF HEALTH CARE—  
CONSULTATION WITH MEDICAL EXPERTS

**Hon. Pierre De Bané:** Honourable senators, I should like to ask the Leader of the Government in the Senate, in view of the immense contribution of Senator Keon to medicine and to health services in this country, if she can ensure that he and other experts whom we have in this institution, the Senate, will be consulted by Chairman Romanow of this royal commission. I am referring, of course, to Dr. Keon and Dr. Morin. These people have devoted their lives to the improvement of the health of Canadians, and could have earned a lot more by moving to the United States but decided to remain in this country in order to help their fellow Canadians.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for his question. I think that it not only behooves the newly appointed chairperson of this commission to interview people like Senator Keon, but that he work very closely with the members of the Standing Senate Committee on Social Affairs, Science and Technology who have done excellent work to date and who I anticipate will continue in that work. They are making a singular contribution to this debate. I understand that the Chair of the Senate committee and Mr. Romanow met this morning.

COMMISSION ON THE FUTURE OF HEALTH CARE—  
INVOLVEMENT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY  
COMMITTEE

**Hon. Douglas Roche:** Honourable senators, to the Leader of the Government, there seemed to be confusion a moment ago about the terms of reference for Mr. Romanow. Surely the terms of reference are contained in Privy Council Document 2001-569, and thus it is an Order in Council appointment that Mr. Romanow has received. This is nearly a three-page document. Inasmuch as it does not —

**Senator Murray:** Is it under the Inquiries Act?

**Senator Roche:** This is a document that is certified to be a true copy of a minute of a meeting of the committee of the Privy Council, approved by her Excellency the Governor General on April 3, 2001.

Inasmuch as this document which spells out the terms of reference for Mr. Romanow — all the work that he is mandated to do — does not make even a single mention of the ongoing work of the Senate committee, can the Leader of the Government explain or offer some sort of view as to why the work of the Senate committee was not even formally referred to Mr. Romanow so that he could officially take into his consideration the ongoing work of the Senate committee?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I think actions speak louder than words, and the very fact that Mr. Romanow, in his first act as the newly-appointed Chair of this commission, met with the Chair of the Standing Senate Committee on Social Affairs, Science and

Technology indicates that the work of that committee will be an integral part of his study.

THE SENATE

INVOLVEMENT IN PARLIAMENTARY PROCESS

**Hon. Douglas Roche:** Honourable senators, I share with the minister the hope and aspiration that the excellent work that the Senate committee is doing will indeed be part of the Romanow process, but my question is aimed at being a little deeper than that.

This is the second time in recent months — the first time being Bill C-20 — that the government has omitted reference to the functions of the Senate in an important action. Does the minister see any pattern here? Does she share my concern about the government's view of the ongoing function of the Senate and how that must be respected by the government? Does the minister share my concern about the ability of the Senate itself to communicate its message of what is really going on here to both the government as a whole and, certainly, to the public?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for that question. I do not think he is accurate, however. Many of us had concerns about the role of the Senate in the debate and discussion on Bill C-20. That was a piece of government legislation. This is a task force, a commission that has been appointed, and the very first action of the new commissioner was to meet with the chair of a Senate committee. Far from saying that the Senate committee is out of the process, I would say that they are very much in the process.

HEALTH

COMMISSION ON THE FUTURE OF HEALTH CARE—  
MANDATE OF COMMISSIONER

**Hon. A. Raynell Andreychuk:** Honourable senators, there have been many questions coming into my office, and I am sure to that of other senators, because of the significance of the medical situation in Canada. The Leader of the Government has used the terms "task force" and "commission." Mr. Romanow has indicated that he has quasi-judicial powers. The minister has indicated that he is the Chair, and was not sure whether there were other members. Mr. Romanow indicated that he would be a single commissioner and that he would have perhaps four — he said three first and then four — special advisors in special areas. He was told that he would receive \$15 million, and that he would be preparing the budget.

With no reflection on the capability of Mr. Romanow, surely the government, on something so significant, would be concerned as to what powers and responsibilities they were delegating to this person, and what authority he has to do his job. If he is not given a clear mandate and the mandate is not clearly understood by the people of Canada, we are off on the wrong foot.



• (1420)

Honourable senators, could the questions that were raised about the minister be answered in a press release and in a reply to me? What has Mr. Romanow been asked to do? Where does his authority come from? Who was consulted? Who drafts the budget? Who will maintain the budget? Who will be responsible for the hiring of staff? Who will Mr. Romanow report to on an administrative basis?

We know that he will, of course, report directly to the Prime Minister and not to Parliament. There are many unanswered questions that need clarification. Mr. Romanow is from Saskatchewan, where there have been medical changes. I am certain that the people of Saskatchewan need to know with what authority this process will take place and what the outcome might be.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for her very detailed questions. I will do my best to obtain detailed answers for her.

For the record, clearly I said yesterday that it was a one-person commission and that the commissioner was the Honourable Roy Romanow. There has never been any question about others on the commission, because it is comprised of a commissioner only. That was on the record as of yesterday.

In respect of the actual title, it is a commission on the future of health care in Canada; thus that is the title of the mandate that was given to him. In respect of the specifics about the preparations of budget and documentation, and to whom Mr. Romanow will report, other than the Prime Minister, I will attempt to obtain the details for the honourable senator.

**Senator Andreychuk:** I thank the honourable senator for her elaboration. If it is a one-person commission, we need a clarification, because "commission" has implications. Will Mr. Romanow then have the exclusive authority to hire the other individuals who will be connected to the commission?

**Senator Carstairs:** Honourable senators, that is part of the question that the honourable senator asked previously: how the budget will be detailed. I will obtain that information for the honourable senator.

**Hon. Michael A. Meighen:** Honourable senators, I am sorely tempted to ask Senator Kirby to answer the questions of Senator Roche and Senator Andreychuk, since he is the only person who has had the benefit of a meeting with Mr. Romanow. Perhaps he shares the government leader's interpretation of the

meeting. I presume that the government leader did not attend the meeting, but Senator Kirby did attend the meeting.

## PRIME MINISTER

### ABSENCE FROM FUNERAL OF THE LATE KING HUSSEIN OF JORDAN

**Hon. Michael A. Meighen:** Honourable senators, the funeral for the late King Hussein of Jordan took place on Monday, February 8, 1999. As we all know, our Prime Minister did not attend. The then Leader of the Government in the Senate told us that the Prime Minister was unable to attend the funeral because he could not give the military the 24-hours notice that they required to make the appropriate flight arrangements.

We have since learned that the Prime Minister's Office knew on Friday, February 5, 1999, at 5:51:00 a.m. to be precise — not on Saturday or Sunday — some three days in advance, that King Hussein was clinically dead. That provided more than enough time to fly the Prime Minister to Jordan.

Honourable senators, in light of this new information, could the minister tell us whether this chamber was misled at that time, or was the then Leader of the Government in the Senate misled by the Prime Minister, or by his office?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I will be very clear: No one misled this chamber. It is true that the late King Hussein was, apparently, clinically dead. However, the family had made no decision as to when to disconnect the late King's life support system. The family did not make that decision for another two days. In my view, it would have been highly presumptuous for anyone to go to a nation that was not yet in mourning, because the family had not yet made a decision about the disconnection of the life-support system.

**Senator Meighen:** With great respect, honourable senators, over 50 world leaders found the time to make travel arrangements and go to the funeral, including President Yeltsin, who was very ill at the time. In his life, King Hussein was a great friend of Canada, and a great champion of peace in the Middle East.

I impart to the minister that it was neither appropriate nor acceptable to blame the military for the Prime Minister's failure to attend the funeral. If the Prime Minister will not tell us the real reason for that failure, would he at least stand up and apologize to the military, to all Canadians and to the people of Jordan, for his absence?

**Senator Carstairs:** Honourable senators, in response to the honourable senator's question, I will reiterate that the late King Hussein was clinically dead. The family had not made a decision about the disconnection of the life support system. It would have been highly presumptuous for the government to take action before the family of the late King, who was a husband, a father and a grandfather, had made their decision.

**Senator Meighen:** Honourable senators, I hear the honourable leader, but I suggest to her that the reason the late King was on life support was to give leaders of the world the opportunity to make arrangements to attend his funeral. He would not have been on life support for as long as two weeks.

**Senator Carstairs:** That is a very presumptuous position, if I may be so bold. Families make their own decisions in these matters, and in some cases they keep their family members on life support systems for a very long time. In other cases, they choose not to do that.

## NATIONAL DEFENCE

### REPLACEMENT OF SEA KING HELICOPTERS— CHANGES TO PROCUREMENT PROCESS

**Hon. J. Michael Forrestall:** Honourable senators, I have a question for the Leader of the Government in the Senate. I respectfully ask her if she is in a position to table some documents that I have been seeking for a number of days.

I have, in my possession, a briefing document from the Department of National Defence to the Privy Council Office, dated March 4, 2001, recommending that the Maritime Helicopter Project be conducted. The document states, and I quote:

Total Weapon system integration is a key concept to achieve capability at lowest cost over full life cycle.

Briefly, this means that the department is looking at best value, and, in part, best value arising from commonality. Why was this procurement process changed, by either Privy Council or Prime Minister's Office, to exclude commonality savings?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, with leave of the Senate, I ask to table the Conflict of Interest Guidelines and post the Employment Code for Public Office Holders in both official languages.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Carstairs:** Honourable senators, in reply to the honourable senator, I do not have the communiqué between DND and PCO, to which he makes reference and dated March 4, 2001. I am certain that the honourable senator will provide the document. During the recess, I shall attempt to obtain the answer that he desires.

**Senator Forrestall:** Honourable senators, I have a similar briefing. In this case, it is to the French government officials and it states, and I quote:

DND would like to avoid any option that places the government in the position of filling the role of prime contractor, whereby the department would be responsible to coordinate the work of two contractors...

This is no longer the case, and I am curious as to why. As well, who changed the department's procurement strategy?

**Senator Carstairs:** Honourable senators, I shall take that question as notice, and I shall attempt to obtain a response to the honourable senator's question as quickly as possible.

• (1430)

**Senator Forrestall:** I believe that I have about 13 or 14 other questions to which the minister has undertaken to provide responses. With the benefit of the Easter break, I shall look forward to some good reading when I return.

**Senator Carstairs:** If the honourable senator will wait a few moments, we will have one of the responses for him this afternoon.

## MULTICULTURALISM

### COMMENTS BY MINISTER

**Hon. David Tkachuk:** Honourable senators, my question is directed to the Leader of the Government in the Senate. Yesterday, the Leader of the Government said that even if Minister Fry's statement had been about Winnipeg, the leader would have accepted Minister Fry's apology.

I will ask now if the leader believes that Minister Fry should resign as Secretary of State for Multiculturalism, even though the apology was accepted?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, no, I must say that I do not believe that. I work more according to the approach of the Mayor of the City of Kamloops. That mayor wrote to the Honourable Hedy Fry on March 29, 2001. The letter states:

Thank you for your letter of today's date offering an unequivocal apology to the people of Kamloops for your comments of 1997 in the Edmonton Journal.

...

Your apology has cleared up the situation and I appreciate the prompt reply to my request.

That is the means by which I think we should accept apologies.

## THE CABINET

### RESPONSIBILITY OF MINISTERS FOR UTTERED REMARKS

**Hon. David Tkachuk:** Honourable senators, from that answer one would conclude that lying to parliamentarians is no longer a cause for resignation. Resignation for that cause is an age-old tradition of the House of Commons and Parliament. Is this the new standard of the Liberal government for ministers of the Crown?



**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I realize that I cannot raise a matter of order since we are in Question Period, but the word "lying" is considered not to be a parliamentary word. I do not think that it should find its way into this chamber, and I do not believe that that is what occurred.

**Senator Tkachuk:** Honourable senators, I will ask the question again. I am not asking this question because of the ill-conceived remarks of Minister Fry, but because I should like to know the new standard for ministers in the other place when they address parliamentarians and when they speak during Question Period.

If a minister must only apologize in Parliament, then there is no onus on them to tell the truth, which is what Parliament is all about. We have no other way to deal with ministers of the Crown.

I ask the question of the leader again: Having said what the minister said, and I will not use that word — even though she admitted that that is what she did —

**Senator Taylor:** You are learning.

**Senator Tkachuk:** I have learned a lot in this place. I am trying to teach Senator Taylor, because obviously he has not learned.

Is this a new standard of the Liberal government for ministers of the Crown?

**Senator Carstairs:** Honourable senators, the standard is clear. When a minister inadvertently puts something on the record that is not correct, that minister stands in this place and apologizes. A few weeks ago, I put something on the record that was not correct. I realized that it was not correct before the Senate sat the next day and during Question Period I stood up and made an apology. That is what is expected of all members of the Crown.

**Senator Tkachuk:** Honourable senators, the minister was making a statement about multiculturalism when she said those things about Prince George that I read out yesterday. She left and then came back for Question Period at which time she said that she had talked to the mayor who had formed a task force. She said that she had approved funding for the task force in Prince George. She said that she had received a letter. It was not as if she had had the time to find the truth. She had time to exacerbate her untruthfulness.

The instance cited by the honourable leader was inadvertent. We all know that, we accepted it, and there was no problem. That is not what happened with Minister Fry.

Is this the standard to which the ministers of the Liberal government will be held in Parliament?

**Senator Carstairs:** Honourable senators, I reiterate that standard, which is clear. When a minister makes a remark that is

incorrect and has done so inadvertently, at the next possible opportunity, the minister stands in this place or the other place and apologizes for the remark.

## CANADIAN WHEAT BOARD

### REGULATORY PROCESS FOR GENETICALLY MODIFIED WHEAT

**Hon. Mira Spivak:** Honourable senators, wheat board officials were before the Standing Senate Committee on Agriculture and Forestry the other day clearly warning that Canada's wheat sales could suffer dramatically if Monsanto's genetically modified wheat is approved. Sales to Europe, Japan and the Philippines are of particular concern. These sales comprise 2.5 million tonnes of the 6 million tonnes of premium wheat sold overseas.

Experimental trials of genetically modified wheat are underway in Western Canada and the U.S. Monsanto expects to apply to register the wheat in 2003, according to the Wheat Board.

The Wheat Board Chairman, Mr. Ken Ritter, said that market acceptance is not factored in to the regulatory process, but it should be. He also noted that registration in 2003 could come before testing or segregation systems are in place, which would mean a great loss of customers.

Is he accurate about the regulatory process? I believe that he is. Will the government, in looking at the application by Monsanto, ensure that market acceptance at very least is in place during this regulation process?

**Hon. Sharon Carstairs (Leader of the Opposition):** Honourable senators, I thank the honourable senator for that question. I was not aware of the discussions that occurred in the Agriculture Committee or in the other place, but I will get the Hansard for that session.

**Senator Spivak:** It was in the Senate.

**Senator Carstairs:** Then I will get the transcript of the committee hearing. Based on the evidence and the honourable senator's question today, I will try to get a specific response.

## INDUSTRY

### POSSIBLE ADVICE TO SOFTWOOD LUMBER PRODUCERS

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, in today's Charlottetown *Guardian*, the following was written:

It is time P.E.I. farmers realized the United States is unlikely to back away from the debilitating potato dispute and consider growing something else the federal agriculture minister said yesterday.



It is my understanding, honourable senators, that Mr. Vanciel made this statement when appearing before the Standing Senate Committee on Agriculture and Forestry.

In light of the view of the Minister of Agriculture that the current protectionist attitude of the United States cannot be fought successfully, and that Canadian farmers should simply plant alternate crops rather than argue the point, is the leader's colleague the Minister of Industry planning to offer the same advice to Canada's softwood lumber producers? Would the Minister of Industry suggest that producers could avoid the problem entirely by ceasing to produce softwood lumber and simply do something else?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for that question. Clearly, the producers of softwood in this country should continue to participate fully in the softwood industry, and so, too, should the growers of potatoes.

### DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table two delayed answers. First, I am tabling the answer to Senator Buchanan's question of March 13, 2001 regarding the Cape Breton Development Corporation. Second, I am tabling the answer to Senator Forrestall's question on March 28, 2001 regarding the Prime Minister's Office.

### CAPE BRETON DEVELOPMENT CORPORATION

#### REQUEST FOR UPDATE ON SALE

*(Response to question raised by Hon. John Buchanan on March 13, 2001)*

— On March 27, 2001, the Cape Breton Development Corporation (Devco) announced that it had decided to discontinue negotiations with Oxbow Carbon & Minerals Inc. regarding the sale and purchase of Devco's operating assets.

— Devco intends to immediately approach the second qualified purchaser to determine its interest in acquiring Devco's operations. The objective for the Corporation remains unchanged; that is, to conclude a sale of its operating assets on a going-concern basis to an entity having the operational experience and financial strength necessary to sustain the operations. In the meantime, Devco will continue normal operations.

— Donkin Resources Limited and Devco continue to be in discussions on the sale of the Donkin mine. The court action initiated in the fall of 1999 has been placed in abeyance while the parties continue discussions.

### PRIME MINISTER'S OFFICE

#### DUTIES OF MR. DAVID MILLER AS SENIOR ADVISOR— POSSIBLE CONFLICT ON INTEREST

*(Response to question raised by Hon. J. Michael Forrestall on March 28, 2001)*

— Mr. Miller joined the Prime Minister's staff as a Senior Adviser on April 2 of this year.

— As a PMO employee, Mr. Miller is required to comply with the full requirements of the Conflict of Interest and Post-Employment Code.

— Mr. Miller will fully respect this code.

— The Public Registry for Lobbyists currently reflects that Mr. Miller has terminated his registrations for all lobbying activities, including those for Eurocopter Canada Ltd.

— I am informed by the Office of the Ethics Counsellor that compliance arrangements will be put in place in the normal fashion.

— The Prime Minister himself has given assurances that Mr. Miller has not been and will not be involved in the Maritime Helicopter file because it is not part of his responsibilities. Mr. Miller has not been involved since taking up his position on April 2, 2001, and will not be involved in the future.

*[Translation]*

• (1440)

### ORDERS OF THE DAY

#### FINANCIAL CONSUMER AGENCY OF CANADA BILL

#### SECOND READING—DEBATE ADJOURNED

**Hon. Céline Hervieux-Payette** moved the second reading of Bill C-8, to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions.

She said: Honourable senators, I am pleased to participate in the debate on Bill C-8, to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions.

This is a very important bill, because of its ramifications, as well as an extremely voluminous one. It amends 23 pieces of legislation, creates one entirely new one, and takes up some 900 pages. It is one of the thickest legislative texts ever brought before Parliament. The bill we are examining today is essentially the same as Bill C-38. There are no policy changes, merely technical ones.

Honourable senators, I believe we all agree that the financial services sector plays a crucial role in Canada's economic well-being. Financial services are an essential element in the everyday lives of Canadians. A modern commercial economy cannot function properly without efficiently processed payments, savings, investment funding and risk management.

As well, Canada's financial institutions play an equally important role in the lives of Canadians. They protect customers' assets, allow consumers and businesses to finance major purchases and investments, and contribute to economic growth as well as job creation.

In our opinion, honourable senators, financial institutions fulfill these responsibilities well. The sector provides work for over half a million Canadians and pays out over \$22 billion in salaries annually. It contributes nearly \$50 billion each year to our exports and generates over \$9 billion a year in tax revenues for the various levels of government.

Honourable senators, as legislators, it is our duty to ensure this sector operates well. Canada's federal financial institutions operate in a legislative and regulatory framework established by Parliament. Under these laws, the government is required to examine this framework periodically and to submit necessary changes to Parliament to ensure it remains effective and relevant in terms of the needs of the economy.

The last examination was in 1997. Although only three years have passed, we have witnessed many important changes within the industry: new competition, new alliances, new products and new expectations, and, especially more recently, a fairly turbulent economic climate.

The 1997 legislative examination was essentially technical, but the government was aware that many broader strategic questions were emerging. It was clear that the subsequent examination would have to be more thorough and deal with the focus of the financial sector and with its role within Canadian society and Canada's economy at the dawn of the 21st century.

Because of the speed of the changes and the complexity of the forces in play in the sector, the Minister of Finance established, in December 1996, the Task Force on the Future of the Canadian Financial Services Sector, better known as the MacKay Task Force.

Comprising experts with a vast variety of experience, skills and interests, the task force was mandated to examine a financial services sector in the throes of vigorous change and to provide recommendations to ensure that our financial system remained solid and dynamic in the 21st century. These experts looked at almost all aspects of financial services in Canada, including: job creation, competition, efficiency and innovation, international competition, new technologies and the interests of Canadian consumers.

After conducting intensive studies and consultations for close to two years, the task force submitted to us, on September 15,

1998, a voluminous report with 124 recommendations. Following the release of that report, two parliamentary committees, including one in the Senate, held national public consultations on the conclusions and recommendations of the task force. These two committees heard close to 200 people, businesses, associations and other interest groups.

The government was receptive to the views expressed by Canadians in their submissions to the task force, in their testimony before the committees, and in their meetings with ministers and public officials.

Honourable senators, according to the first recommendation of the task force, changes are occurring too quickly to wait to take action until the next review, scheduled for 2002. We endorse that recommendation. Since market forces can change much faster than laws, it is very important to act as quickly as possible.

This is why the government announced a new strategic framework that includes a comprehensive set of 57 measures. That initiative is described in a policy paper entitled "Reforming Canada's Financial Services Sector: A Framework for the Future." The bill before us today is based on that policy paper.

I should like to remind the Senate of the four fundamental principles that guided the government in developing the specific measures included in that document. These principles should also guide our debate on this bill.

The first principle provides that banks, trust companies, credit unions, insurance companies and other financial institutions should have the necessary leeway to adjust to market changes, be competitive and expand, both domestically and abroad. This principle must be respected to preserve the contribution of the financial sector to economic growth and job creation.

This is why the bill provides greater flexibility to banks and insurance companies, so that they can become holding companies and consider new ways of improving their efficiency, including a reduction of their regulatory burden.

Similarly, the bill increases the ownership ceiling in widely held financial institutions from 10 per cent to 20 per cent of voting shares and to 30 per cent of non-voting shares, as recommended in the Senate report. This new definition of "widely held" makes it possible to pave the way for significant exchanges of shares, which are necessary for the conclusion of strategic alliances and joint venture agreements. This is an important business strategy which is becoming increasingly widespread among other industries, and one which Canada's financial institutions should also be able to take advantage of.

The bill considerably broadens the range of investments which can be made by financial institutions, both for holding companies and for parent companies. Financial institutions will be able to choose the structure they prefer, without being subject to various restrictions. It will be possible to make authorized investments internally, in a branch of the parent company, or in an affiliated company which is part of a holding company.



The new framework also provides for a transparent merger review process among major banks. Under this process, plans to merge major banks will be reviewed by the Competition Bureau from the perspective of market competition, and by the Office of the Superintendent of Financial Institutions from the perspective of safety and soundness. The banks will also have to provide and make public a Public Interest Impact Assessment (PIIA) describing the costs and benefits of the proposed merger, its probable impact on sources of financing for consumers and small enterprises, costs, quality and availability of services, and access to the network of branches nationally, among other things.

Under the bill, this aspect will be examined by the House of Commons Standing Committee on Finance and by the Standing Senate Committee on Banking, Trade and Commerce, which will hold public hearings, contrary to the view expressed in the Senate report, which wished to avoid introducing partisanship into such a strategic sector.

• (1450)

The bill also ensures that these financial institutions comply with the mechanisms and conditions for approval of mergers or acquisitions, and sets out sanctions for non-compliance.

The second principle behind this bill is the importance of competition. We feel, honourable senators, that the presence of healthy competition in the financial services sector is necessary if consumers and businesses are to be able to benefit from the widest selection at the best possible price.

Even if there is already a wide choice of suppliers in the financial market, I believe that honourable senators present would probably all agree that there could be more competition in this sector.

In recent years, not many new banks have been created. In fact, only two new Canadian banks have been created since 1987. That is why the government is taking steps to eliminate obstacles to the creation of new banks, and to stimulate the introduction of new players. This is an aspect of great interest to the Senate committee. We are therefore reducing the minimum capital requirements for starting up a bank to \$5 million, from \$10 million.

We also propose a new ownership regiment with three different categories depending on size, which makes sole ownership of small banks possible. In other words, we will allow one individual or one corporation to own all the shares in one bank, provided that the bank's equity is under \$1 billion.

Under the present regulations, an entrepreneur can start up a bank, but he is required to dispose of all but 10 per cent of his shares after 10 years, regardless of the business' growth. This

dissuades many entrepreneurs from starting up a bank; no one wants to start something up, raise it to a respectable size, and then be forced to sell nearly all of it 10 years later.

Banks with equity totalling between \$1 billion and \$5 billion will also have the choice of being widely held, so long as at least 35 per cent of their shares are widely distributed.

We believe these measures will encourage new firms to enter the banking sector. We hope they will lead to the creation of small community institutions serving the needs of a particular community.

Moreover, commercial businesses will also be entitled to set up new banks. This could be of interest to retail businesses that have a network of stores or commercial establishments.

Our biggest banks, those with equity worth over \$5 billion will, however, remain widely held, and the prohibition against a single shareholder or a group of shareholders exercising control over a major financial institution will be maintained.

This bill provides as well measures to strengthen credit unions and caisses populaires. These community financial institutions play an important role in all provinces. They are often the only financial institution in a town or village.

Credit unions have, however, a number of challenges to face. They cannot serve their customers in other provinces. They consider there is a lot of duplication in their support activities, increasing their administrative costs. In addition, it is very difficult for them to coordinate and to offer common national products and services, such as a credit union credit card.

Credit unions have come up with a plan to meet these challenges and have discussed it at length with their members. The plan is based on the creation of a national service entity. I am happy to say that this bill attempts to respond to the needs of the credit unions. It contains measures that will enable them to restructure so as to reduce their current fragmentation and to increase efficiency. These changes will help to strengthen Canadian credit unions, making them more competitive and better able to withstand the competition of other suppliers of financial services nationally.

We also propose to extend access to the Canadian system of payments to life insurance companies, to securities dealers and to money market funds. Currently, only deposit-taking institutions can be members of the Canadian Payments Association. We feel that a greater choice of participants in the payments system will encourage competition, since these companies will be able to offer payments services similar to a chequing account. In addition, we will introduce measures to integrate the entry of foreign banks into Canada into the new strategic framework in order to demonstrate greater flexibility towards those foreign banks which wish to set up in Canada. Foreign banks offering financial services in Canada will have the same choice of investments as Canadian banks, including the possibility of owning more than one bank. They will also be able to set up more than one branch in Canada.



We have also simplified the regulatory authorization system for foreign banks in line with the legislative amendments for Canadian banks. The purpose of these measures is simple: to stimulate the healthy presence of foreign banks in Canada and to encourage competition in our own financial services sector. They will not necessarily be on a equal footing, but they will make an important contribution to building this new system, because some of their activities will still be governed by provincial legislation.

Overall, these measures will bring about greater competition in the financial services sector, thus helping to ensuring that Canadians can obtain the best offer possible from the suppliers of financial services.

However, greater competition will not be enough to ensure a fairer balance between clients and financial institutions. As consumers, we must comparison shop in order to reap the benefits of competition. We must seek out and choose the best services for ourselves. To do that, we must have access to suppliers of services, we must have all the required information to make an informed choice, and we must be treated equitably.

This is why our bill deals with the third fundamental principle whereby consumers, regardless of their income and of whether they live in urban or rural areas, and companies, regardless of whether they are big or small, should benefit from services that meet the highest quality standards.

In this regard, the bill improves access to bank accounts. It allows us to define, through regulations, reasonable identification requirements to open a bank account. The bill also allows us to adopt legislative provisions on low cost accounts and requires banks to follow a fair and reasonable process for branch closures.

I should point out that memoranda of understanding have already been successfully negotiated with each bank regarding low fee retail deposit accounts. While such accounts may vary from bank to bank, they must all comply with certain standards, so that all Canadians have access to a bank account at an affordable price.

The bill creates two new agencies to protect the interests of consumers in the financial sector, and our committee intends to take a close look at them.

The federal government is already allocating resources to protect consumers in the financial services sector, but these resources are spread in a number of departments and organizations. This is why we are creating a new federal body, the Financial Consumer Agency of Canada, to regroup and strengthen these resources.

The new agency will ensure that financial institutions are in compliance with consumer provisions and that they respect the commitments made in their memoranda of understanding. It will also provide information to consumers and help improve their understanding of financial goods and services.

The government will also cooperate with financial institutions to create a new ombudsman for Canadian financial services. This body will act as an independent, objective and impartial third party, and it will review complaints from consumers and small business owners who feel they have been treated unfairly by their financial institution and were not able to settle the dispute directly with the management of the financial institution.

Banks will be required to adhere to the new body. Federally regulated trust companies and insurance companies will be subjected to a dispute settlement system by a third party and, in this regard, we are inviting them to choose the new ombudsman.

• (1500)

Financial institutions under provincial regulation will also be able to link up with the new ombudsman if they wish. Of course, it is better to treat clients fairly from the start than to resort to a long and tedious process of dispute regulation. This is why the government is proposing a number of measures to promote healthy business practices.

This includes greater transparency and the release of information in documents on financial services, so that clients know exactly what is going on.

We will also require financial institutions with equity of over \$1 billion to publish annual statements describing their contribution to Canada's economy and society, a practice already in effect among our neighbours to the south.

These statements will describe the institution's progress in response to the needs of specific groups, such as improved access to banking services for low income individuals, seniors and persons with disabilities. They will also include statistics on branch openings and closings. We know, however, that government measures always carry a cost, which brings me to the fourth and final fundamental principle underlying our bill.

We believe we must contribute to improving the security and solidity of the sector, but we must also take every opportunity to lighten the regulatory burden when we can.

Canada's regulatory context is largely up to date. In reality, many improvements were made no later than 1997. Some aspects of the regulatory system must, however, be improved, and we have used this opportunity to do so.

First, we will simplify the authorization mechanism for many operations requiring the approval of the superintendent. The superintendent will have 30 days following receipt of a request for authorization to express concerns, obtain more information or require a report. Otherwise, the operation is automatically authorized after the 30-day period.

Second, we propose to amend the manner in which we manage our payments system. The bill amends the mandate and public management structure of the Canadian Payments Association, giving the public a greater role in the decision-making process. It also authorizes the Minister of Finance to ensure that all the bylaws, regulations and standards of the Canadian Payments Association are in the public interest. The bill also provides for the oversight by the minister of other designated payments systems.

Third, we must ensure that the prudent safeguards for the financial system are consistent with the new reality of stronger competition which we are trying to promote. This is important, because our financial system has a hard-won reputation for safety and soundness. The bill therefore increases the authority of the superintendent of financial institutions to settle the cases of companies which do not observe the relevant regulatory requirements and it increases the superintendent's authority to intervene in the affairs of a financial institution in difficulty.

These three amendments are timely improvements to our regulatory structure and will facilitate other measures taken under the new framework.

In conclusion, honourable senators, the measures set out in the bill we will be debating today, and in the weeks to come, are consistent with and advance each of the four principles: They promote the efficiency and growth of our financial institutions and they encourage competition on the Canadian market; they protect Canadian consumers and make them accountable in their dealings with financial institutions; and finally, they improve the regulatory context.

Each of these four principles is important. By taking each of them into account and adopting measures on all fronts, we ensure that the new financial services legislative framework will be comprehensive, balanced and equitable.

This bill makes this objective possible. Small and medium-sized enterprises will also benefit from the increased choice of suppliers of financial services.

Honourable senators, Canada's financial sector has an excellent reputation and our financial institutions are prosperous, both here and abroad. In order for our financial institutions to maintain this excellent reputation and remain strong, we need this new strategic framework for the future, since it will take into account the changes that are occurring, allow our financial institutions to take advantage of new opportunities and manage change in a way that benefits Canadians.

Honourable senators, the Senate, which has always played a prominent role in the legislation affecting Canadian financial institutions, must ensure that the measures proposed in this bill will allow the creation of that framework.

On motion of Senator Tkachuk, debate adjourned.

## KANESATAKE INTERIM LAND BASE GOVERNANCE BILL

### SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Fraser, seconded by the Honourable Senator Gauthier, for the second reading of Bill S-24, to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence.

**Hon. Jean-Claude Rivest:** Honourable senators, it is a pleasure to speak today, at second reading stage of Bill S-24, to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence.

Of course, when we discuss this issue in Canada — and this is particularly true in Quebec, since we are talking about the Mohawks and the Oka crisis — it brings back bad memories to the Aboriginal people concerned, to Quebecers and to all Canadians. We cannot forget that Corporal Lemay of the *Sûreté du Québec* lost his life during this terribly painful crisis.

Subsequent efforts at negotiation, which led to this interim agreement, are a striking example of how necessary it is to try to reconcile differences rather than escalating confrontation.

The confrontations that took place at that time had tragic consequences. Honourable senators will recall that the Premier of the day, Robert Bourassa, had to put off medical treatment, with tragic results. People were held hostage by this crisis. It spread as far as Châteauguay and thus tied up the bridges.

Honourable senators, after this crisis, the Government of Quebec signed an agreement with the people of Kanesatake on police activities. Discussions have been ongoing with representatives of the Mohawks and with the Canadian government. A governance agreement has been reached, the one addressed by this bill.

Over and above the unfortunate incidents that occurred, we must remember that the events of the Oka crisis are part of the far broader context of the Aboriginal situation in this country and of the way Aboriginal have been treated. All of us are aware of their economic and social difficulties.

The increasing number of agreements throughout Canada are an illustration of the radical sea change that has occurred in Canadian public opinion, as the public now acknowledges the importance of addressing the situation of our Aboriginal peoples.



The Aboriginal leadership and the chiefs of the various nations are working increasingly in conjunction with governments and with local communities to find together a space for development which enables Aboriginal communities to catch up to the standards of other communities and to contribute through their rich culture and talents to improving the general conditions of life in this country.

• (1510)

I will say a brief word about this limited agreement, which we will have the opportunity to examine in detail in committee.

We have for the past while seen a multitude of agreements involving Aboriginal peoples. When we speak of Aboriginal peoples, we are not speaking of one single entity. There are great differences among the various nations. We can see this in specific crises concerning fishing rights, logging rights or hunting rights, where agreements are signed by various nations, in Canada. These agreements often respond to local needs and concerns or to the interests of a given nation, without our really knowing if the federal government and the provincial governments have a vision and a general policy for responding to the needs of the Aboriginal peoples.

I fear that this multiplicity or this series of individual and very limited agreements may harm not only the Aboriginal populations concerned, but the people of Canada, who do not know exactly what is going on.

The federal and provincial governments have sometimes signed agreements that vary considerably. They do not have exactly the same meaning, although they concern basic demands for self-government by Aboriginal peoples.

This concerns me, especially as we find them in Bill S-24. There is no real cooperation between the federal government and the provinces in their attitude toward the demands and the agreements they sign with the First Nations. There is no consultation.

The same is true when it comes to areas of provincial jurisdiction. There is no consultation between provincial governments in the various regions of Canada on the way in which they must formulate agreements with Aboriginal peoples. The result is a very great disparity between the agreements signed over time. This bodes ill for the future. Such an approach sorts out some of the crises and problems, but the basic claims of the Aboriginal peoples and the way in which Canadian society and First Nations must structure their dealings in the future remains extremely confused and constrained.

In the medium term, there will be inconvenience. All those concerned with these issues will have to ponder this, all the more so as the Canadian government has the Erasmus-Dussault report,

a monumental study that involved considerable effort and research. We hear almost nothing about this report any more.

Getting back to this agreement, we have an agreement between the Canadian government and the leaders of the Kanesatake Mohawks. The Government of Quebec was not consulted; it is not a party to this agreement. The important points in this agreement come under the jurisdiction of the Government of Quebec.

For example, the Government of Quebec does not know what the agricultural zoning requirements of this agreement will be. Will the Mohawks be authorized to build a casino in the commercial area? After the agreement was signed, meetings were held between officials, and the Government of Quebec asked the federal spokespersons twenty or so questions. According to the most recent information, the Government of Quebec had not yet received satisfactory answers to the technical questions it had asked, because it was not a party to the process.

The reverse is probably true. In Quebec, Minister Chevette signs agreements with the Inuit. I am not sure that the Canadian government is involved in the negotiating process. The Aboriginal peoples, with all their great needs, must not be placed constantly in a position of jurisdictional conflict between the provincial governments and the federal government. This is why I am arguing that, when one level of government seeks to enter into an agreement with a given nation, it ought to be done cooperatively with the federal governments in order to avoid all manner of questions cropping up after the agreement is signed. Such cooperation would avoid implementation of the agreement being blocked by the third party, which might have been excluded or insufficiently informed about the nature of the agreement.

The agreement states that the Mohawks are going to acquire a degree of power to enact laws and ordinances. When these laws and ordinances are incompatible with a federal statute, the latter prevails. However, should they be incompatible with a provincial statute, it is the Aboriginal law that prevails. By virtue of what? How can a provincial government accept that by signing an agreement with a First Nation, the federal government can disqualify a provincial statute? This raises questions.

The Government of Quebec still has a number of concerns about this particular agreement. They are unaware of the exact nature of the bill. They have tried to obtain information. According to what I have been told, nothing is conclusive. At this time, the agreement has been well received, nevertheless. One of the extremely positive aspects is that the municipality of Oka, through Mayor Patrie, has described this very limited agreement as a step in the right direction. It does set out that the exercise of the powers conferred upon the Mohawks in this agreement shall be exercised — and the Mohawks have accepted this — in harmony with the municipality. Thus on this territory there is an obvious desire on both sides for harmonious cooperation, so that the local Aboriginal and non-Aboriginal populations may agree on a development approach for this region that will be respectful of both sides.



Honourable senators, I have a lot of questions for clause-by-clause examination of the bill. This agreement, by necessity very limited, does not deal at all with the land claims of the Mohawks in the region or with the dispute over native demands. It leaves the question of lands unresolved. This point is made very clear. It gives the Mohawks and Aboriginal populations powers of governance in an attempt to try to organize, develop and support development in their local community. In this regard, efforts must be praised in the hope that the concerns over harmonization, information and integration with other levels of government may be put in place so that each benefits in the best interests of all.

• (1520)

**Hon. Lise Bacon:** Honourable senators, the history of relations between Canadians and the Aboriginal peoples — at least the most recent — will always be marked by the crisis at Oka. This conflict had particularly serious consequences for Quebec, in human and economic terms, among others. It profoundly marked relations between the communities in this region for the past ten years.

In 1990, these events, distressing to us all, caught the attention of the entire world. The community's continued ignorance with respect to the Mohawk claims not only exacerbated them, but created profound resentment. We recall the decision by the municipality of Oka to expand a golf course using lands traditionally used by the Mohawks. It was clear this was unacceptable to them.

There is no need to consult the public to understand that they never want to experience another such period of instability and hostility again. Senator Rivest mentioned some of the events, and I share what he has just said to you.

Following these events, Canada bought the disputed land to be used and occupied by the Mohawks of Kanesatake, in August 1990. Of course, the fact that the federal government bought the land did not solve all the problems. After negotiating for a few months, the parties were still trying to come to an agreement. However, the ambiguity of the legal status of the land and of the issue of legislation applicable to Kanesatake made the negotiating process very difficult.

The parties then decided to negotiate so as to allow a more comprehensive treatment of the irritants and grievances that led to the demands made by each party.

The agreement reached by the Mohawks of Kanesatake and Ottawa on their rights to exercise self-government powers and its resulting measure, Bill S-24, are the outcome of these long months of negotiations. This was a monumental exercise. It is indicative of the desire of both sides to restore a peaceful and positive atmosphere.

But the most important thing was the process for ratification of the agreement by the Mohawks, which led to Bill S-24. Before

the land agreement was even initialed, the Mohawks informed members of their community of the negotiations that were taking place on a land agreement with the government. They asked their members for their opinion on a number of issues, including the thrust of these negotiations and the content of a possible agreement.

More often than not, these negotiations took the form of information sessions for all Mohawk members, whether residents or not.

From June 21, 2000, when the agreement was signed, until the eve of the ratification vote, the Mohawk council of Kanesatake led an intensive information and consultation campaign.

It was the day after the ratification vote that some members of the Mohawk community began to have doubts. They claimed that a simple majority was not enough to ratify the land agreement, particularly since the result was not conclusive, with a difference of only two votes.

It is necessary to recall at this point that a majority, however small, of members ratified the agreement using a democratic process. It is our duty to recognize this agreement.

I wish to add, however, honourable senators, that it is our duty not only to recognize this majority, but also to recognize this imposing minority, or at least to listen to it. Democracy requires it and our parliamentary institutions demand it.

Can we allow ourselves to forget the 237 Mohawks who did not wish to ratify the agreement? I do not think so. The Mohawk council does not seem to either. In response to criticism concerning the ratification of the agreement, it invited the Honourable Lawrence A. Poitras, retired Chief Justice of the Quebec Superior Court, to conduct an independent judicial audit of the ratification and voting procedures. The judge concluded that these procedures were in order in every respect.

Because of the absence of a sizeable majority, Mr. Poitras ordered a recount. On December 12, 2000, the result of the original vote in October was confirmed.

Approximately 25 per cent of Kanesatake Mohawks went to the polls on October 14. Does this mean they were not interested in their future? No, certainly not. Kanesatake is a young democracy. It must face the challenge of reconciling the practice of electing its government with traditional methods of selecting leaders. The same reality applies in the case of the mechanism to ratify the agreement.

Bill S-24 respecting Kanesatake governance establishes an interim land base for the Mohawk community. It also clarifies the constitutional and legal status of this land base, in addition to establishing Kanesatake's authority to pass legislation so that it can administer it. The bill provides for the harmonization of Kanesatake laws and municipal bylaws applying to neighbouring Mohawk and non-Mohawk property in the village of Oka.

However, the interim land base agreement is not intended to set the boundaries of the final land base ultimately established. It was in this context that the bill with respect to Kanesatake governance of the interim land base was drawn up. It will put this land under the exclusive legislative authority of the Parliament of Canada and will set the conditions for governance of these lands by the Mohawks.

The Government of Canada and Kanesatake are at present involved in historical research in order to create a shared data base that will be extremely useful in a definitive settlement of what is to become of the "reserved lands" as the Indian Act calls them, in particular the Lake of Two Mountains seigneurie. That is why this bill does not affect either the ancestral rights or the treaty rights of the Kanesatake Mohawks.

Finally, this agreement is neither a land settlement nor a definitive settlement of outstanding grievances. It is an agreement on the exercise of governing powers by Kanesatake over the interim land base. What must be kept in mind above all is that it confers the same powers for the administration of Mohawk lands as other First Nations have enjoyed for decades.

Despite what Senator Rivest has said, I am told that the Government of Quebec has given its support to the process and to the objectives of the land agreement, although these responsibilities are federal in nature.

I should like to emphasize that Bill S-24 is a step in the right direction for our government and for the Mohawks of Kanesatake. We hope other steps will follow, for they, too, are needed.

I should also like to pay tribute to the memory of the former Premier, Mr. Bourassa, who stayed on the job during the events of 1990, in the knowledge that he was extremely ill, because there was nothing more important to him than social peace.

**Senator Rivest:** Honourable senators, I should like to ask a question on the ratification process within the Mohawk community. In the agreement, no rules on how to do this are set out. For example, the fifty-plus-one rule is accepted. Is the question of no interest? Was the nature of the question clear? Is the government satisfied with the process in the case of the Mohawk nation? Did the Canadian government take any particular precautions in connection with this referendum process?

**Senator Bacon:** Honourable senators, the Mohawks of Kanesatake must be trusted to hold their vote, which they did. They must be trusted to assume the responsibilities of consulting and informing their members, which they did. The vote has been held, and, obviously, I deplore the fact that the people won by such a narrow margin, 239 to 237. This is why I said that this is a step forward and that I hope more steps will follow.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure honourable senators to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Robichaud, bill referred to the Standing Senate Committee on Aboriginal Peoples.

[English]

## FEDERAL LAW-CIVIL LAW HARMONIZATION BILL

THIRD READING—MOTION IN AMENDMENT—  
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator De Bané, P.C., seconded by the Honourable Senator Poulin, for the third reading of Bill S-4, to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law.

And on the motion in amendment of the Honourable Senator Grafstein, seconded by the Honourable Senator Joyal, P.C., that the Bill be not now read a third time but that it be amended,

(a) on page 1, by deleting the preamble; and

(b) in the English version of the enacting clause, on page 2, by replacing line 1 with the following:

"Her Majesty, by and".

**Hon. Gérald-A. Beaudoin:** Honourable senators, Senator Grafstein proposed deleting the preamble in Bill S-4. I have great respect for that opinion, but I disagree. Here are my reasons.

The purpose of Bill S-4 is to harmonize federal legislation with the Quebec civil code. Very few senators, if any, are against the principle of the bill. Senator Grafstein questions the constitutionality of certain provisions of the preamble and the adequacy of certain words, and he invokes the Canadian Charter of Rights and Freedoms.

As we know, Bill S-4 is not a constitutional amendment. It is a bill, but a bill of great importance. It is quite valid and inside the parameters of the Canadian Constitution. The wording is technical to a certain extent. It could hardly be otherwise, considering the objective of the bill. To draft such a bill is an art.



Bill S-4 does not change our two private law systems, common law and civil law. They have cohabited for a long time. In Canada, we have a system of bijuralism which works very well. Bill S-4 harmonizes the civil law and federal legislation, and it is long overdue. I hope that the bill will be adopted this time.

Should we have a preamble? It is true that we are not concerned with the Constitution here, but many bills, as has been clearly explained by Senator Murray, have a preamble. At the present time, for example, Bill C-5, Bill C-7, and Bill C-10 now before Parliament have preambles.

Since we can trace the genesis of the present bill to the Quebec Act of 1774, as I explained last Tuesday, it is obviously justified in having a preamble. History is very important, and it is the time to show it clearly.

The Quebec civil code came into force in August 1866. It was adopted by the Province of Canada, that is, the system including at that time Upper Canada and Lower Canada, 1840-1867. It applied to Lower Canada, now the Province of Quebec, since 1867. In 1994, we had the new civil code in Quebec. It was adopted by the Quebec National Assembly.

The Quebec civil code is bilingual, and that is a very important fact.

In my view, it would be a mistake to delete the preamble. Certain senators think that we should amend the preamble, but that is another question.

The first "whereas" is criticized by some, but the words "avoir accès" in the first "whereas" do not mean physical access. They mean "to render more accessible to the lay person," as Senator De Bané explained very clearly. I agree entirely with him.

The words in the preamble are used by many federalists and are inspired by our history. The reintroduction in 1774 of French laws in a British colony is certainly unique, as well as the civil code of Lower Canada in the Province of Canada, before Confederation, and so are sections 94 and 98 of the Constitution Act, 1867. A preamble that is based on such historical facts is certainly justified, in my view.

• (1540)

Senator Grafstein is of the opinion that the preamble violates the Charter of Rights. The Charter of Rights refers to Canadian citizens in section 3 — that is the right to vote — section 6 and section 23, for obvious reasons. It refers to "every individual" in section 15, again for obvious reasons. The wording used in the first "whereas" is very general: "all Canadians," not "Canadian citizens." In my opinion, it looks adequate in the circumstances. I can hardly imagine that a court of law will declare the expression "all Canadians" unconstitutional in the context of the preamble and the act. After all, the Civil Code of Quebec and the common law of all the other provinces are already governed by

the Canadian Charter of Rights and Freedoms, and that will continue.

I do not see how the present preamble may violate the Charter of Rights and Freedoms. Some senators would perhaps prefer other words. I have total respect for such an opinion, but it is another view.

As Bill S-4 will be followed by many bills of the same nature, I invite honourable senators to accept the preamble, and I renew my invitation to proceed with the bill as it is.

**Hon. Jeremiah S. Grafstein:** Honourable senators, I thank the learned Senator Beaudoin for his explication. I have learned much about the origins of French law in the course of this debate. Our colleague Senator Stollery brought to our attention when he was co-chairman of the constitutional committee of this house that the origins of French law are even more complex than the the discussion before the committee indicates. Senator Stollery brought to my attention that prior to 1866 there were three strains of law in and for the area known as Lower Canada, and those were the civil code, the civil law — which was different from the civil code — and the common law, the common law that was expressed both in French and English. The civil law was expressed in both French and English and the code itself was expressed in both French and English. I believe Senator Beaudoin agreed that, in fact, the Quebec legislature, even when it promulgates a law, is not the sole authority as to what the civil law is.

From a cursory look at this whole area, it is clear that there is a great tradition of law we do not fully understand that deeply impacted the civil law and the civil code, and that is the seigneurial law that took place before their time.

I say this to demonstrate my view that it is very difficult in the course of a preamble to give a historical analysis in a phrase or two. I am not in any way derogating from what Senator Beaudoin has said. However, is it not preferable that if, in fact, there are rich sources in the Province of Quebec that are different from the rest of Canada, they be reflected more clearly than this cursory, concise and misleading second "whereas"?

**Senator Beaudoin:** Honourable senators, there is one thing I should correct. What I have learned at the Faculty of Law is that in Lower Canada the seigneurial system was abolished in 1854, at the time of Lafontaine and Baldwin. I do not think it was a system in force in New France before Canada was ceded to Great Britain after the Battle of the Plains of Abraham.

I have some difficulty understanding why we consider the second "whereas" not to be clear-cut. It is.

WHEREAS the civil law tradition of the Province of Quebec, which finds its principal expression in the *Civil Code of Québec*...

and the verb is coming:

...reflects the unique character of Quebec society;



That is very clear-cut. We have a civil law tradition that finds its principal expression in the civil code. As I explained Tuesday, "droit civil" is larger than civil code, but it is the same genius.

The conclusion reflects the unique character of Quebec society. My argument is very simple. The introduction of French laws in a British colony by Lord North in 1774 is certainly unique in the history of Great Britain.

That is history. It is not me; it is history.

**Senator Grafstein:** Senator Beaudoin, I think this debate is helping all of us to have a clearer understanding of the origins of law in the province of Quebec. In that sense, if we are educating even me, this is a great move forward for me and for some of my colleagues in the Senate.

Having said that, I should like to refer to recital number 1, of which you have just given your view. The general interpretation indicates that if the word is not precise, one is to take the plain meaning as it applies. That is well known. I think it is an architectonic of interpretive law as it applies to legislation.

When I turn to "all Canadians," the clear meaning is all Canadians, which would refer to all Canadian citizens. It certainly would not include refugees, residents, and people who do not have citizenship status. Again, it talks about all Canadians in a loose way, where as on its plain meaning it could only refer to Canadian citizens. Certainly a resident in Canada who would normally have the advantage of the federal law in that province, either under the civil or the common law, could not be considered a Canadian. He or she is a resident. The same applies to refugees. We had a long and discursive discussion on exactly this point in the constitutional debates. In some instances it applies to citizens, and in others to everyone, but to say "all Canadians" leaves open a great uncertainty. Certainly, why leave it to the courts to define?

I obviously will not go on to the other recitals. Perhaps if there is further debate on this question, I will go on to serious questions of interpretation on some of the other issues. I leave it to honourable senators to respond to the "all Canadians" phrase.

[Translation]

**The Hon. the Speaker *pro tempore*:** I am sorry, Senator Beaudoin, but your speaking time has expired. Do you wish to seek leave to continue?

**Senator Beaudoin:** Honourable senators, I should like to be able to answer the question put to me by Senator Grafstein.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Beaudoin:** I thank honourable senators. I have already limited my speech to the amendment. I would respond by saying that the words "entitled to access" —

[English]

This does not mean physical access, as I said. It means to render more accessible to the lay person. The drafter used the words "all Canadians" because, in his opinion, it was not very precise, but it means all those who are in our country. It means all those who are in Canada. It does not address itself to the world. It addresses itself to all those who are living in our federation.

It has been difficult to understand the meaning of harmonization. It is to adapt the federal statute to the genius of the civil law system as is already the case with the common-law system in nine other provinces. This is what it means.

Take the example of a car accident in Quebec. The vehicle is owned by the Crown and driven by a civil servant while in the execution of his duties. If the accident takes place in Montreal, the civil law applies because the Crown is liable, just like an ordinary citizen. If the car accident happens in Ottawa, the common law applies. Honourable senators, this bill does not change our bijuralism. It is there; we know it very well. All the courts know that, including the Supreme Court.

• (1550)

The Department of Justice has said that it is time to harmonize our federal laws to the genius of the civil code. Do not forget that in 1994 we adopted the new civil code, which is a fantastic code in my opinion. The department says that it will adapt federal statutes to the genius of the civil code in Quebec, as we have adapted them to the common-law genius in all the other provinces. This, of course, is unique because we have only one province with a civil code. The civil code is not restricted to French Canadians in Quebec; rather, it applies to the whole population of Quebec. When one goes to court, one may plead the English version of the civil code.

The phrase "all Canadians" is not precise. When the law is not precise, it must be interpreted in the way it is written, unless, at the very top of the judiciary, the Supreme Court decides otherwise. Honourable senators, ours is a very good system. If we do not use the words "all Canadians," what would we use — "all inhabitants of Canada" or "all those who happen to be in Canada"? Federal statutes outline the rights of landed immigrants. These rights are not delineated in preambles. I would be stunned if a court of law were to say that because the drafters used the words "all Canadians," the bill contravenes the Charter of Rights and the drafters should have been more precise. Sometimes it is dangerous to be too precise because we must adapt the genius of the system to the ordinary person.

Experts in this field would understand more clearly, perhaps, but since the law is addressed to every citizen of our federation, we must take the opportunity to render the federal law more accessible to the lay person. It is not more; it is not less.

On motion of Senator Cools, debate adjourned.

## BILL TO MAINTAIN THE PRINCIPLES RELATING TO THE ROLE OF THE SENATE AS ESTABLISHED BY THE CONSTITUTION OF CANADA

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Corbin, for the second reading of Bill S-8, to maintain the principles relating to the role of the Senate as established by the Constitution of Canada.— (*Honourable Senator Christensen*).

**Hon. Ione Christensen:** Honourable senators, I rise to speak to Bill S-8. I have listened with interest to the debates on this issue and reread the transcripts. After hearing Senators Joyal, Beaudoin, Grafstein, Kinsella, Moore and Cools speak so eloquently on this issue, I am not sure that I can bring anything new to the debate on the role of the Senate. This is, however, an issue in which I have great interest, as senators know from my intervention on Bill C-20.

I have no expertise in constitutional matters, but as a senator and as an individual who believes in this institution and its place in our governing system, I should like to add my thoughts to the debate.

The Senate, as set out in our Constitution, is one of two inseparable legislative chambers that make up our bicameral system. Unfortunately, this fact has been, at times, conveniently ignored. Senators who have previously spoken on this issue have reminded us that the Senate and the House of Commons have the same powers in all but three areas: money bills, confidence votes and the limitation on constitutional matters. If it becomes the will of the people to change this, the proper constitutional changes must be brought forward. Until then, the Senate is to play its proper role.

Bill S-8 would rectify omissions made in the past that exclude the Senate. However, not including Bill C-20 in this bill causes me some concern, and I agree with other speakers who have addressed this issue.

When I first read the bill, honourable senators, the inclusion of the Yukon First Nations Land Claims Settlement Act gave me concern. This treaty was signed by three parties, and I have made inquiries and found that such changes can, in fact, be made.

Honourable senators, I go back to the words of Mr. McEvoy from the Faculty of Law at the University of New Brunswick. In appearing before the committee on Bill C-20, he said:

The legitimate role of the Senate is not as a second voice of the people but as the voice of the regions of Canada within the most basic federal institution.

That is what I think the Fathers of Confederation had in mind when they created our two Houses of Parliament. Unfortunately, today that vision of our country seems to have become blurred in some eyes.

The omission of the Senate in legislation is much like the exclusion of one marriage partner in the decision-making process. When making important decisions that affect the future of the family, one cannot assume that the other partner will agree without consultation. Both parliamentary partners are needed to provide good legislation for Canadians.

Honourable senators, I support the principle of Bill S-8, and I look forward to hearing further debate. However, regardless of the success of this bill, I feel that we, as senators, should ensure that, from this date forward, no legislation is accepted in this place that does not include or acknowledge the role of the Senate as set out in our Constitution.

On motion of Senator Robichaud, for Senator Carstairs, debate adjourned.

## STUDY ON ECONOMIC DEVELOPMENT OF NATIONAL PARKS IN NORTH

BUDGET AND REQUEST FOR AUTHORITY  
TO ENGAGE SERVICES AND TRAVEL —  
REPORT OF ABORIGINAL PEOPLES COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Aboriginal Peoples, presented earlier this day.

**Hon. Thelma J. Chalifoux** moved the adoption of the report.

• (1600)

She said: Honourable senators, I am requesting that honourable senators approve this report today because we wish to travel to the northern part of our country where the summers are very short. In order for the committee to have safe working and travelling conditions, we need to get started on it right away.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.

## BLACK HISTORY MONTH

PRESENTATION TO CANADIAN BAR ASSOCIATION—  
INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Cools calling the attention of the Senate to the celebration of Black History Month in Canada, and the Canadian Bar Association of Ontario dinner in Toronto on February 1, 2001, at which she, as the keynote speaker, spoke to the topic "A Room With a View: A Black Senator's View of the Canadian Senate."—(*Honourable Senator Chalifoux*).



**Hon. Thelma J. Chalifoux:** Honourable senators, today, at long last, I am able to speak about Black History Month and the great contribution that Canadians of African heritage have made in the development of Alberta's history and heritage.

The first black rancher, John Ware, came to Alberta before it was a province. He obtained land and cattle. His struggles were the same as those of other pioneers of that time. I am sure that he faced some discrimination. In those days, survival was the paramount priority. John Ware always kept his door open. Everyone who needed a helping hand was welcomed at his door. He faced discrimination by rising to all challenges with kindness and wisdom. His family has been honoured by Alberta's ranching industry. The legacy that John Ware left for us all lives on in his family and in Alberta's history of inclusion for all people.

Many Americans of Black ancestry immigrated from Oklahoma to Alberta when the Jim Crow laws were enacted there. They settled north of Edmonton in Amber Valley and west of Edmonton in Wildwood. These immigrants were free men. They were not slaves. Their struggles were great and their challenges many. They farmed the land. They too faced discrimination, but they found allies with the Aboriginal peoples of the area. The newcomers who came to these areas joined together as a united force, as the country was harsh.

The same challenges were faced by the pioneers who settled in Wildwood. These brave, strong people settled into Canadian society by changing attitudes through kindness and education.

When I look at the changing faces of my province of Alberta, I see a mosaic of wonderful colours and of different cultures and ethnicity in all aspects of Alberta society. Yes, we have a long way to go in accepting each other's differences, and new immigrants must adjust to our Canadian ways.

I am very proud today to mention a page here in the Senate from Alberta. Jason Pearman, a third generation Canadian, is of Barbadian-Bermudian heritage. He is attending the University of Guelph studying bioengineering. I am so proud that he is an Albertan.

I am a Métis from Alberta and the first Aboriginal woman appointed to the Senate. Like Canadians of Black heritage, we have faced many years of discrimination. That is why I can relate to and understand the struggles that we all face as Canadians in this multicultural mosaic. Mixed marriages between our nations have created wonderful colours, like a rainbow. My family consists of children ranging from very blond to very dark. The Métis have never been fully accepted by the First Nations because we are not dark enough, nor by the non-Aboriginals, as we are too dark. Children of mixed marriages between Black Canadians and others face the same discrimination. Most of us know who we are and the proud history of our ancestors, so we hold our heads high.

When I was offered the honour by the Prime Minister to serve in this wonderful chamber, I was humbled by his faith that I would carry out my duties in the best interests of all Canadians.

Since being here, I have never faced any form of discrimination. My family was accepted with total respect when I was sworn in.

I realize that there is latent discrimination in all areas of the workforce, be it the public service or the private sector. Once it is identified, we must ask ourselves how we should deal with it. We can legislate many things, but we cannot legislate attitudes. When we allege discrimination without proof of our charges, we leave ourselves open to more confrontation.

Gandhi chose to practice passive resistance to address the terrible atrocities that faced his people. I have always encouraged my children to face discrimination with the courage to be who they are. My four sons have survived and have strong identities. My daughters have suffered more, as they are blond and brunette, with olive complexions.

Black History Month is vitally important, not only to emphasize discrimination but to celebrate the proud history of Canadians of Black ancestry.

My colleagues have honoured me by not looking at the rainbow colours of my family but by recognizing the qualities I bring to this chamber.

I wish to join Senator Oliver in expressing my pride in all Canadians of colour.

On motion of Senator Carstairs, debate adjourned.

## SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

### COMMITTEE AUTHORIZED TO STUDY STATE OF FEDERAL GOVERNMENT POLICY ON PRESERVATION AND PROMOTION OF CANADIAN DISTINCTIVENESS

**Hon. Michael Kirby,** pursuant to notice of March 29, 2001, moved:

That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine and report upon the state of federal government policy relating to the preservation and promotion of a sense of community and national belonging in Canada. In particular, the Committee shall be authorized to examine:

- a) the effectiveness of the policies, programs, symbols and institutions that have been used in the past to promote and protect Canadian distinctiveness or which have fostered an element of Canadian distinctiveness merely by their existence;
- b) the effects of globalization and rapid technological change on Canada's ability to preserve and promote its distinctiveness at home and abroad;
- c) the options that exist to modernize federal policies with respect to preserving, creating and promoting the uniqueness of Canada in a changing national and international context;



d) the opportunities that exist to use new technologies to market our unique qualities to the world and to engender pride in Canadians about themselves and their country.

That the Committee submit its final report no later than December 20, 2002; and

That the Committee be permitted, notwithstanding usual practices, to deposit any report with the Clerk of the Senate, if the Senate is not then sitting; and that the report be deemed to have been tabled in the Chamber.

He said: Honourable senators, this motion contains an order of reference for a study to be done by the Standing Senate Committee on Social Affairs, Science and Technology which, it is hoped, will be conducted by a subcommittee.

The study is an outgrowth of two things. The first is a study that the committee did when Senator Murray was chair. Indeed, Senator Murray has been instrumental in working with me in developing the terms of reference for the study. The committee has a detailed research plan that goes beyond the executive summary or the abridged version that is here in the report.

Essentially, the proposed study will look retrospectively at some of the policies adopted by Canadian governments over the last 30 years, which were designed to foster nationalism. Today, in an increasingly borderless world, many of those policies that were popular in the 1960s and 1970s could not possibly be put in place because we have such things as trade agreements and the Internet.

The first part of the study will look retrospectively at many of the policies that were put in place to try to assess how effective they have been. The second part of the study will look into the future to assess the kinds of policies that should go forward in light of the increasingly borderless nature of society, given both communications and trade agreements.

On motion of Senator Lynch-Staunton, debate adjourned.

[Translation]

• (1610)

## ADJOURNMENT

Leave having been given to revert to Government Notice of Motions:

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That, when the Senate adjourns today, it do stand adjourned until Tuesday, April 24, 2001, at 2:00 p.m.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until Tuesday, April 24, 2001, at 2 p.m.

**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(2nd Session, 36th Parliament)**  
**Thursday, April 5, 2001**

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-2	An Act respecting marine liability, and to validate certain by-laws and regulations	01/01/31	01/01/31	—	—	—	01/01/31		
S-3	An Act to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts	01/01/31	01/02/07	Transport and Communications					
S-4	A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	01/01/31	01/02/07	Legal and Constitutional Affairs	01/03/29	0			
S-5	An Act to amend the Blue Water Bridge Authority Act	01/01/31	01/02/07	Transport and Communications	01/03/01	0	01/03/12		
S-11	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	01/02/06	01/02/21	Banking, Trade and Commerce	01/04/05	17			
S-16	An Act to amend the Proceeds of Crime (Money Laundering) Act	01/02/20	01/03/01	Banking, Trade and Commerce	01/03/22	0	01/04/04		
S-17	An Act to amend the Patent Act	01/02/20	01/03/12	Banking, Trade and Commerce	01/04/05	0			
S-23	An Act to amend the Customs Act and to make related amendments to other Acts	01/03/22							
S-24	An Act to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence	01/03/27	01/04/05	Aboriginal Peoples					

**GOVERNMENT BILLS  
(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-2	An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations	01/04/05							
C-8	An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions	01/04/03							
C-20	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	1/01
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	2/01

**COMMONS PUBLIC BILLS**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.

**SENATE PUBLIC BILLS**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	01/01/31	01/01/31	National Finance	01/03/28	5			
S-7	An Act to amend the Broadcasting Act (Sen. Finestone, P.C.)	01/01/31	01/02/07	Transport and Communications					
S-8	An Act to maintain the principles relating to the role of the Senate as established by the Constitution of Canada (Sen. Joyal, P.C.)	01/01/31							
S-9	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	01/01/31							
S-10	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	01/01/31	01/02/08	—	—	—	01/02/08		
S-12	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	01/02/07	01/03/27	Social Affairs, Science and Technology					
S-13	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	01/02/07							
S-14	An Act respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day (Sen. Lynch-Staunton)	01/02/07	01/02/20	Social Affairs, Science and Technology					



S-15	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	01/02/07	01/03/01	Energy, the Environment and Natural Resources
S-18	An Act to Amend the Food and Drugs Act (clean drinking water) (Sen. Grafstein)	01/02/20		
S-19	An Act to amend the Canada Transportation Act (Sen. Kirby)	01/02/21		
S-20	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	01/03/12		
S-21	An Act to guarantee the human right to privacy (Sen. Finestone, P.C.)	01/03/13		
S-22	An Act to provide for the recognition of the Canadian Horse as the national horse of Canada (Sen. Murray, P.C.)	01/03/21		

PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-25	An Act to amend the Act of incorporation of the Conference of Mennonites in Canada (Sen. Kroft)	01/03/29	01/04/04	Legal and Constitutional Affairs					



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CANADA

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OFFICIAL REPORT  
(HANSARD)

Tuesday, April 24, 2001

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THE HONOURABLE DAN HAYS  
SPEAKER



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## THE SENATE

Tuesday, April 24, 2001

The Senate met at 2 p.m., the Speaker in the Chair.

Prayers.

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I draw to the attention of honourable senators visitors in our gallery. His Excellency Jozef Migas, President of the National Council of the Slovak Republic, accompanied by a delegation of parliamentarians, is present.

Please welcome our guests. You are most welcome here in the Senate of Canada.

### SENATORS' STATEMENTS

#### WORLD WOMEN'S CURLING CHAMPIONSHIP

NOVA SCOTIA—CONGRATULATIONS TO WINNING RINK

**Hon. Wilfred P. Moore:** Honourable senators, last month, I spoke in recognition of the Canadian Women's Curling Championship victory of Colleen Jones and her rink from the Mayflower Curling Club in Halifax, Nova Scotia. I am delighted to report that these Canadian champions also won the World Women's Curling Championship in a 5-2 victory over Sweden at Lausanne, Switzerland, on April 7, 2001.

In speaking to this superb effort, I find it noteworthy that *The Globe and Mail*, which proclaims itself to be Canada's national newspaper, gave markedly more coverage to the losing men's rink than it did to our victorious women's rink. Such unbalanced reporting, regardless of the medium, does a disservice to our female athletes. Only with equal coverage can we recognize with honour the efforts of our female champions. Only with equal coverage can we encourage our young female athletes to work to attain championship levels of performance. A female Canadian champion is a Canadian champion. A female world champion from Canada is a world champion.

I am sure that all honourable senators join me in congratulating Skip Colleen Jones and her teammates: lead Nancy Delahunt, second Mary-Anne Waye, third Kim Kelly, alternate Laine Peters and coach Ken Bagnell. We extend to them our thanks for the honour they brought to Canada.

#### ORGAN AND TISSUE DONATION AWARENESS WEEK

**Hon. Mabel M. DeWare:** Honourable senators, I rise today to commemorate Canada's National Organ and Tissue Donation Awareness Week, which runs from April 23 to 29 this year.

Organ and tissue donation is a very important issue, one that can be a matter of life and death for many Canadians. It is becoming more important every day. Canada's population is not only getting bigger; it is getting older, so the need for organ and tissue donations is growing. Unfortunately, the number of donors has not been keeping pace. There are still many more people who need organ and tissue donations than there are donors. People are waiting for donors to help them enhance the quality of their lives, to lengthen their lives and to save their lives. Those people could be family members, friends or even ourselves.

Many die each year because of a shortage of donors. Canadians are starting to realize that their help is needed to meet the need for more organ and tissue donations. For that, we can thank events such as the National Organ and Tissue Donation Awareness Week, the efforts of many organizations and individuals, and the media coverage given to certain cases involving organ and tissue donations.

Honourable senators, governments in Canada are starting to listen. I was pleased by the federal government's announcement earlier this month that it is contributing to a plan to help increase and coordinate safe organ and tissue donation in Canada. That is certainly a step in the right direction, but governments cannot do it alone. It is important for individual Canadians and their families to talk about organ and tissue donation, to consider becoming donors. National Organ and Tissue Donation Awareness Week gives us a good opportunity to do that. Once one decides to become a donor, one must be sure to register this decision according to the procedure established in each province or territory.

Honourable senators, I am proud to be wearing a green ribbon pin in support of National Organ and Tissue Donation Awareness Week. The colour green symbolizes life for many people in Canada who need organ and tissue donations or who will need them in the future.

• (1410)

It represents a chance for them to be healthy again and to once more enjoy the simple pleasures in life that many of us take for granted. I urge colleagues in this chamber and all Canadians to do what they can to help give them a second chance.



## GENOCIDE OF ARMENIAN PEOPLE

**Hon. Shirley Maheu:** In 1957, one of our great ministers of foreign affairs was awarded the Nobel Peace Prize. I refer to the Right Honourable Lester B. Pearson.

Today our peacekeeping forces are coming home traumatized. They have seen ethnic cleansing, crimes against humanity, human tragedy and, yes, genocide, in East Timor, Rwanda, Croatia and Kosovo.

How can we accept these situations that our citizen soldiers are facing and have faced and deny the first genocide of the 20th century, when 1.5 million Armenian lives were taken?

I should like to read into the record, in honour of the Armenian Canadians on the Hill today, a poem written by Allan Whitehorn.

### How Do We Remember the Dead?

How do we remember the so many dead?  
 How do we cope, if at all, with the awful dread?  
 Do we deny the existence of past genocidal deeds?  
 For to do so, a growing ignorance feeds.  
 Tragically, for many of my kin, there is no marked grave.  
 The surviving few endured so much and were ever so brave.  
 The only memorial marker is our collective memory.  
 Why this important fact do some not seem to see?  
 To refuse to say the "genocide" word denies some form of closure.  
 A moral lapse for trade and commerce sadly comes to exposure.  
 I do not appreciate a bureaucratic memo or decree.  
 Why this important existential fact can't they see?  
 I reflect on the painful memory of my family and kin,  
 and wonder why some cannot acknowledge this dreadful sin.

## FOREIGN AFFAIRS

### RUSSIA—INVESTIGATION INTO AUTOMOBILE ACCIDENT INVOLVING DIPLOMAT

**Hon. Marjory LeBreton:** Honourable senators, it has been three months since Catherine MacLean was killed and Catherine Doré was seriously injured at the hands of Russian diplomat Andrei Knyazev. Mrs. Doré was in hospital until just last week. The alleged impaired diplomat's escape from Canadian justice under the veil of diplomatic immunity has been well covered in the media.

The time is now for the federal government to make a clear statement on the serious nature of the crime of impaired driving and how this particular incident is, like all other impaired driving fatalities and injuries across the country, intolerable. For over

two months, MADD Canada has been calling on the Prime Minister and the Justice Minister to speak out on the severity of this particular incident and the crime of impaired driving.

Honourable senators, this is not an issue of diplomacy. How the government deals with this issue goes to the very heart of this government's commitment to fight impaired driving. It is not just a Foreign Affairs matter. The Prime Minister and the Justice Minister should be speaking out forcefully on the need to take a tough stand on this crime.

I call on the Prime Minister and the Minister of Justice to demonstrate the government's seriousness by publicly calling for Russia to lay charges and have Andrei Knyazev brought to justice.

Honourable senators, recent statements by the Minister of Foreign Affairs regarding diplomatic immunity are but a first, small step to dealing with potential future cases. The sad fact is that this crime should have been dealt with in Canada. What is required is direct and swift action, as was the case in Washington when then President Bill Clinton acted immediately and intervened to assure a Georgian diplomat face American justice for impaired driving causing the death of young teenage girl. Because of the President's personal intervention, the man is now serving seven to 21 years in an American prison. Surely it is not too much to ask that our Prime Minister and this government take similar measures to protect innocent Canadians from criminal acts at the hands of drunk drivers, whether they be diplomats or residents of Canada.

## PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

**The Hon. the Speaker:** Honourable senators, I should like to draw your attention to the fact that we have three pages visiting us from the House of Commons.

[Translation]

First, allow me to introduce Christiane Hacault of Ile des Chênes, Manitoba. She is studying journalism in the Faculty of Arts at the University of Ottawa.

Pierre-Alexandre Davignon is studying in the Faculty of Administration at the University of Ottawa and comes from Gatineau, Quebec.

[English]

Jonathan Kuzub, of Saskatoon, Saskatchewan, is enrolled in the Faculty of Social Science at the University of Ottawa. His major is political science.

## ROUTINE PROCEEDINGS

### STATE OF HEALTH CARE SYSTEM

BUDGET AND REQUEST FOR AUTHORITY TO ENGAGE SERVICES—REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE PRESENTED

**Hon. Michael Kirby**, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Tuesday, April 24, 2001

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

#### THIRD REPORT

Your Committee, which was authorized by the Senate on March 1st, 2001, to examine and report upon the state of the health care system in Canada, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of such study.

Pursuant to section 2:07 of the Procedural Guidelines for the Financial Operation of Senate Committees, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

MICHAEL KIRBY  
*Chair*

(For text of appendix, see today's Journals of the Senate, Appendix, p. 367.)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Kirby, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[Translation]

#### ADJOURNMENT

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That, when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, April 25, 2001, at 1:30 p.m.

Motion agreed to.

[English]

### JUDGES ACT

#### BILL TO AMEND—FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-12, to amend the Judges Act and to amend another Act in consequence.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

● (1420)

### SALES TAX AND EXCISE TAX AMENDMENTS BILL, 2001

#### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-13, to amend the Excise Tax Act.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

[Translation]

### CANADA FOUNDATION FOR SUSTAINABLE DEVELOPMENT TECHNOLOGY BILL

#### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-4, to establish a foundation to fund sustainable development technology, on which it seeks the assent of the Senate.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

[English]

## ACCESS TO CENSUS INFORMATION

### PRESENTATION OF PETITION

**Hon. Lorna Milne:** Honourable senators, I have the honour to present the signatures of 2,016 Canadians from all 10 provinces, as well as the signatures of 220 people from the United States and signatures of people from the United Kingdom, all of whom are researching their Canadian ancestry. In total, 2,239 people petition as follows:

Your petitioners call upon Parliament to take whatever steps necessary to retroactively amend Confidentiality/Privacy clauses of Statistics Acts since 1906, to allow release to the Public, after a reasonable period of time, of Post 1901 Census reports starting with the 1906 Census.

Honourable senators, these signatures are in addition to the 3,853 I have presented in this calendar year. I have now presented petitions with 6,092 signatures to the Thirty-seventh Parliament and petitions with over 6,000 signatures to the Thirty-sixth Parliament, all calling for immediate action on this very important matter of Canadian history.

Next week, we will hear from Alberta.

## QUESTION PERIOD

### NATIONAL DEFENCE

#### UNITED NATIONS EMBARGO ON IRAQ—NAVAL SHIPS ASSIGNED TO PERSIAN GULF—ORDERS NOT TO PARTICIPATE IN NON-COOPERATIVE BOARDINGS.

**Hon. J. Michael Forrestall:** Honourable senators, many questions arise during a two-week break from the chamber.

The Leader of the Government in the Senate undertook to respond in some depth to a number of questions that I consider to be pertinent and important, as do many other Canadians. Is the leader now in a position to respond to those questions?

While she is considering that, I have a further question. We have seen in the press reports that Canadian navy ships enforcing the appropriate United Nations resolutions in the Persian Gulf

have been ordered not to board and search ships that show signs of resistance. Is this a change in Canadian foreign policy? Have we departed from the requirement of the United Nations resolution, or is this an operational problem associated with the difficulty the Sea Kings have had? I think particularly of the boarding of the GTS *Katie*.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank Senator Forrestall for his question and also for his opening comment, with which I shall begin. I was concerned on April 5 when Senator Forrestall indicated that there seemed to be a disproportionate number of questions outstanding from him. Our records show that he has asked 19 questions, some of which were answered directly. A total of 12 delayed answers have already been received or will be received later this week. There are currently only three outstanding questions raised by the Honourable Senator Forrestall.

I thank my staff for keeping such wonderful statistics.

However, Senator Forrestall has asked a very serious question which is deserving of an equally serious response this afternoon. It is true that Canadian naval forces operating in the Persian Gulf were not permitted to participate in non-cooperative boardings along with our allies. We know that our navy is highly capable, professional and able to perform the full range of their duties. However, as to the particular circumstances of the HMCS *Calgary* and the HMCS *Charlottetown*, those issues are decided on a case-by-case basis.

**Senator Forrestall:** Honourable senators, I am sure that many others will be wondering what precisely is meant by "issues are decided on a case-by-case basis." Are we to assume that the appropriate commander in the area has the authority to make those decisions? Does the ship's captain have that authority, or must that authority come from Ottawa on each case?

**Senator Carstairs:** Honourable senators, as we all understand, multinational operations are a team effort. Apparently, it is common for various participants to be assigned different roles and tasks within the overall mission. With respect to this overall mission, that was not one of the tasks assigned to the Canadian ships.

**Senator Forrestall:** Honourable senators, can the minister tell us whether, at the start of the United Nations mission, Canada was authorized to interdict and board where there was cause to do so? If so, who has withdrawn that authority? Was that done under the authority of the United Nations, the Canadian government, foreign policy or the commander in the field?

**Senator Carstairs:** Honourable senators, I understand that this is a joint decision made by all the participants in the team that is providing support. If there is a different or broader explanation, I will obtain that for the honourable senator.



• (143m)

**Senator Forrestall:** Honourable senators, I am left with the impression now that our allies have some doubt with respect to the professionalism of Canada's Armed Forces serving in that particular area with respect to this United Nations resolution. I would not want that kind of question mark hanging too long over their heads because our Armed Forces are, as the minister suggested, the most professional in the world.

**Senator Carstairs:** Honourable senators, I do not think there is any question mark here. It is clearly a decision that is made jointly, as to which particular ships will do which particular activities. However, as I indicated to the senator, if there is any further information, I will get it for him as soon as I possibly can.

## FOREIGN AFFAIRS

### RUSSIA—INVESTIGATION INTO AUTOMOBILE ACCIDENT INVOLVING DIPLOMAT

**Hon. Marjory LeBreton:** Honourable senators, with regard to my earlier statement, I should like to ask a question of the Leader of the Government in the Senate. Could she ascertain what steps the Prime Minister, the Minister of Foreign Affairs and the Minister of Justice have taken to ensure that the Russian diplomat who killed Catherine MacLean and injured Catherine Doré is charged and tried for the alleged crime of driving while impaired, causing death and injury?

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator knows, the case is in the hands of the Russian justice authorities. It is up to them to determine whether the evidence, as it has evolved and developed, warrants the laying of charges. It is no longer, if I may be so bold, a Canadian authority issue. It is a Russian authority issue.

What is more significant is the action taken by the Minister of Foreign Affairs with respect to all diplomats located in Canada — clearly a definitive statement that such an incident will not be allowed to happen in the future.

**Senator LeBreton:** Honourable senators, I believe the minister talked about a second charge of impaired driving, which was a minimalist solution. I want to know whether the government is considering following the precedent set in the United States of waiving diplomatic immunity on all drunk-driving charges in order that future offenders face the justice system in Canada rather than escaping to their own countries where the penalties may be less severe.

**Senator Carstairs:** The Vienna Convention lays out the terms. Our Minister of Foreign Affairs has said very clearly that such activity will not be tolerated in Canada and that action will be taken very quickly.

## THE SENATE

### FREE TRADE AREA OF THE AMERICAS—EXAMINATION OF AGREEMENTS TO ENSURE EQUITABLENESS OF CLAUSES ON CIVIL SOCIETY

**Hon. Douglas Roche:** Honourable senators, I have two questions for the Leader of the Government in the Senate, flowing out of the Summit of the Americas in Quebec City last weekend.

My first question focuses on the role of the Senate. In what way can the Senate examine the text of the Free Trade Area of the Americas Agreements in order to ensure that the negotiations for such agreements as they take place will support and not worsen efforts to improve human rights, labour standards, health, education and the rights of indigenous peoples in all the countries of the Americas, the majority of which are developing countries with great economic and social suffering?

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his question. Let me begin by saying that I think the Summit of the Americas was a great success with respect to the manner in which the police forces behaved and with respect to the way in which those individuals who were peaceful demonstrators — and they were by far the vast majority of participants in Quebec City — behaved. One very poignant moment for me was when one young student, who clearly was there for peaceful activism, waved his hand to gain the attention of violent protestors and said, "Don't you understand? You are ruining it for the rest of us." Having been a teacher for many years, I thought that poignant, as he was there for the best possible motives.

In terms of the specific question of Senator Roche, the negotiated agreements, of course, will be debated and discussed on many fronts. To my knowledge, there is no specific way in which we can hold a discussion until we have the final text, at which point it will be debated, because, of course, it will need to be passed in this chamber. However, I take great pleasure from the democracy clauses that came out of the Summit of the Americas. I wish the media had paid as much attention to that aspect of the meeting as they did to the violent activities of so very few.

**Senator Roche:** Honourable senators, my second question deals with the civil society element to which the minister has referred.

I should like, first, to commend the government for financing the parallel Summit for Civil Society. As we know, there were up to 30,000 people in Quebec City, who held important discussions. Many of them represented churches, unions and so on. The fact that a very small number of protestors used violence, which I condemn, drew virtually all the media attention. Thus,

the people of Canada — I do not know about the government — do not understand the positive contribution that the Summit for Civil Society made to the Summit of the Americas. I am looking down the line and asking in what way the government can stimulate an ongoing dialogue between those important elements of civil society that have a lot to say about educational and health standards, and to have that dialogue in a non-confrontational setting. Further, when the negotiated settlements reach this chamber, in what way can those agreements benefit from the combined thinking of the best of civil society and the best of government in the non-confrontational setting?

**Senator Carstairs:** I thank the honourable senator for his question. Quite frankly, I find it somewhat offensive to refer to the members of civil society as being only those people who are not members of government. I believe we are members of civil society, and I think all of the leaders who were at the Summit of the Americas are members of civil society. The media — and I do not wish to impart this view to the senator — seem to make a fallacious distinction between government and civil society. There are many of us who participate in government. In fact, the great majority of the participants in the Summit of the Americas, if not all of the participants, were legitimate members of civil society.

In terms of the ongoing dialogue about issues with respect to employment, labour standards and democracy, that debate will take place now on an ongoing basis between parliamentarians in this chamber and the other chamber. The Government of Canada has indicated by its frank championship of the democracy clauses that it will support such dialogue.

**Senator Roche:** Honourable senators, I wish to clear up this inadvertent misunderstanding of my reference to civil society. "Civil society" has become an alternate term — a synonym, if you will — for NGOs, or non-governmental organizations. We in this chamber are officials, in one manner or another, of the governmental process. The term "civil society" is meant to refer to those NGOs in important areas of society — education and health being two — who have something to say and who need to be able to work with governments in the production of agreements that will benefit the whole of society.

**Senator Carstairs:** The honourable senator and I will have to agree to disagree. I believe the term is a misnomer and offensive.

• (1440)

## ENVIRONMENT

### WINNIPEG FLOODWAY—FEDERAL GOVERNMENT INVOLVEMENT IN FURTHER DEVELOPMENT

**Hon. Terry Stratton:** Honourable senators, this question is addressed to the Leader of the Government. I will ask a mundane question about events in Manitoba.

As you know spring has arrived, and with spring in Manitoba, flooding occurs. I should like to refresh the minister's memory as to a letter to the Honourable David A. Anderson, Minister of the Environment, dated April 9, 2001. A copy was sent to the minister as well. The Leader of the Government may not be able to respond to this today. I am not certain.

Minister Anderson is quoted in the letter from the North Richot Action Committee. This committee's members live south of where I live.

Minister Anderson had assured them that the basis for developing the rules of operation for the floodway would also take into account the protection of the city of Winnipeg and upstream communities. I bring this to the attention of the minister because the perception is that the city of Winnipeg is being protected and the area south is being sacrificed in times of severe flood, such as in 1997.

How is the federal government addressing this issue? It requires the approval of the federal government to change or modify the rules of the operation of that floodway. The community itself is not satisfied as to the actions of the federal government. Could the leader respond to that question at this time?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, to my knowledge, I have not received that particular letter from the North Richot Action Committee, but it may well be on its way to my office at the present time. In terms of the specific question, I will be in touch with the Minister of the Environment and find out his response to this issue.

Regarding the broader question, as the honourable senator knows major discussions are currently underway between the Province of Manitoba and the federal government about flood proofing for the city as well as the surrounding areas, including those upstream. The issue is one that we almost needed to address again this year. Fortunately, the rains subsided, and we did not need to address it. However, the issue cannot be allowed to linger for too long.

**Senator Stratton:** I would agree with the leader on the basis that during the past six years, the floodway has been used significantly in three of those years — 1996, 1997 and again this year.

Honourable senators, two solutions to the flooding problem in southern Manitoba were recommended in an International Joint Commission report released recently. One solution was to expand the existing floodway. The second was the construction of a dike at Ste. Agathe, south of the city. The floodway expansion protects the city to a 500-year flood level while the construction of the dike at Ste. Agathe would protect to a 1000-year level.

It would appear that Premier Doer is supporting the expansion. It was stated in the *Winnipeg Free Press* this morning that it is maintained that —



...there is a high degree of consensus that the expanded floodway is the best option. He has the support of some key players, including Manitoba's top Liberal MP, Ron Duhamel, provincial Opposition Leader Stuart Murray and the International Joint Commission...

In my view it is premature to start pushing because the expansion to the floodway would leave those residents upstream virtually defenceless. The Ste. Agathe solution protects those people between Ste. Agathe and the floodway, as well as the citizens of Winnipeg. It is at the 1000-year flood level, which is critical.

Honourable senators, my question is whether it is not premature on the part of any one in the federal government to come out pushing for a certain solution?

**Senator Carstairs:** I thank the honourable senator for his question. My understanding is that the Honourable Ron Duhamel favours projects that will provide flood protection. No decision has been made as to which of the two projects — the expansion of the floodway or the dike in Ste. Agathe — is the preferred option.

Honourable senators, the premier is correct in saying that he has support for flood protection. I do not think that he is entirely accurate in saying that he has support for one particular project. I agree that it is premature.

## HUMAN RESOURCES DEVELOPMENT

### EMPLOYMENT INSURANCE ACT—RULING ON CONTRAVENTION OF CHARTER OF RIGHTS AND FREEDOMS

**Hon. Lowell Murray:** Honourable senators, I believe that we may be debating Bill C-2 later this afternoon. That bill is to amend the Employment Insurance Act. By way of preparing us for this exercise, could the Leader of the Government in the Senate tell us the position of the government with regard to the findings of a tribunal in her own city of Winnipeg a couple of weeks ago to the effect that Canada's employment insurance laws contravene the equality provision under the Charter of Rights? They are considered to be constitutionally unfair to women because it is harder for the primary caregiver to work the hours needed to qualify.

Does the minister know if it is the intention of the government to appeal this judgment to the Federal Court of Appeal, or, does the government intend to bring in further amendments to the Employment Insurance Act?

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his question. I cannot give him an answer as to whether it is the position of the government to appeal, or to not appeal or to make amendments based on the tribunal's judgment. However, it is an excellent set of questions for the committee hearing process.

## AGRICULTURE AND AGRI-FOOD

### DOWNTURN IN INDUSTRY—GOVERNMENT SUPPORT

**Hon. Leonard J. Gustafson:** Honourable senators, Canadians are privileged to have the upcoming visit by Prince Charles to our country. I am sure that we are all looking forward to it.

In an article in *The Globe and Mail* today I was pleased to see someone of his status recognize the importance of agriculture in Canada in light of what is happening to the rural areas of Canada.

During the last two weeks, I have attended auction sales with farmers selling out. My boys are in the moving business, as well as farming. They moved two homes. In one situation in which the farm was sold, they did not get even enough money from the sale to buy a double wide house trailer. In another situation three farmers who had been working an area sold the farm and moved the house to another farm. It is a sad situation out there.

When will the government get serious about what is happening the farm industry in Canada, as the Prince indicated in the article? I recommend that the Leader of the Government read that article, and I hope that the Prime Minister reads it. It is a serious situation.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I did indeed read the article because, like the honourable senator, I come from an agricultural province. I was pleased to see the Prince refer not only to agricultural, but also the rural way of life. He has a positive contribution to make to both aspects.

Honourable senators, the federal government has been serious about aid to farmers. The total aid package to help farmers out of an extremely difficult situation has reached \$1.6 billion. In addition, the Prime Minister has convened a task force on future opportunities in farming. We look forward to examining such issues as the effectiveness and future direction of safety net programs, how farm products can attract a premium price, and what kind of rural economic opportunities must be made available particularly with respect to added agri-food activities.

• (1450)

## SUMMIT OF THE AMERICAS

### FORMULATION OF THE NORTH AMERICAN ENERGY WORKING GROUP—REQUEST FOR INFORMATION

**Hon. Pat Carney:** Honourable senators, my question is for the Leader of the Government in the Senate. There has been an announcement at the Summit of the Americas about the creation of a North American Energy Working Group. Can the leader provide information about the terms of reference and what the working group will address?



**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for her question. With respect to the announcement of an energy working group, only three leaders participated: President Fox of Mexico, President Bush of the United States and Prime Minister Chrétien of Canada. I cannot give the honourable senator any specific details other than that which was contained in the press release, which I know she has received. However, I will endeavour to generate further details for her.

**Senator Carney:** I ask the question because there is much reference in the media and in ministerial speeches, or statements, about the desire of the Liberal government to develop, in conjunction with the President of the United States, a continental energy policy. Since the Americans already have the right of access to Canada's energy supplies and we have the right of access to the U.S. markets in oil, gas and hydro under agreements negotiated by the Conservative government, what, exactly, is there left to share? There is also unrestricted access to investment opportunities in the tar sands and other energy resources in Canada. Other Canadians and I are genuinely interested in knowing the details of the goals of the Chrétien government in respect of a continental energy policy when we have already achieved that.

**Senator Carstairs:** As I indicated, I will try to obtain additional information for the honourable senator.

[Translation]

#### COVERAGE BY RADIO-CANADA

**Hon. Roch Bolduc:** Honourable senators, my question is for the Leader of the Government in the Senate. What is her opinion on what she was able to see on television during the Summit of the Americas? I may be biased, but I mostly saw people trying to jump over a fence. I saw that scene at least one hundred times during coverage of the event by Radio-Canada, but I did not see and hear much of the speeches made by participants during the summit. It seems to me that this does not make sense.

I am giving my point of view. However, I should like to hear your opinion and the government's opinion. Analysis by the CBC television network, at least its French-language component Radio-Canada, was poor. It was not as good as it used to be in the fifties.

[English]

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I suppose one has to say that the price of democracy is a free media. The free media is free, therefore, to take their preferred angles on the stories. I would defend that right, just as I would defend other democratic freedoms.

Is the honourable senator asking if I would like to have seen more analytical debate as to the substance of what was taking place in the meetings and more coverage of the meetings

themselves, those not behind closed doors? I may even have liked to see the President of the United States eating P.E.I. potatoes, but, unfortunately, those things were not given to us by our media.

[Translation]

**Senator Bolduc:** I have nothing against that when the coverage comes from New York or elsewhere, but when it comes from Radio-Canada, we are the ones footing the bill. We are paying for this. We subsidize this network. I did some calculations and it costs me \$1,000 per year for the CBC alone. Do you think this is normal? Come on! If I want to watch wrestling, I will go to a wrestling or boxing match.

[English]

**Senator Carstairs:** I thank the honourable senator, but although on occasion CBC annoys me, and it obviously annoys him, I admire and respect, for the most part, the work of the CBC.

#### DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have five delayed answers: two in answer to Senator Forrestall's questions of March 21 and 29, 2001, concerning replacement of the Sea King helicopters; one in answer to Senator Kinsella's question of March 1 regarding ratification of the Inter-American Convention on Human Rights; one in answer to Senator Stratton's question of March 13 regarding the cost of gun control registration; and one in answer to Senator Spivak's question of March 13 regarding emissions from Ontario Power Generation Inc. plants.

#### NATIONAL DEFENCE

##### REPLACEMENT OF SEA KING HELICOPTERS— ADEQUACY OF EUROCOPTER COUGAR MARK II

(Response to question raised by Hon. J. Michael Forrestall on March 21, 2001)

The Government has developed a procurement strategy that will ensure that we acquire the right equipment for the Canadian Forces at the lowest price for Canadians. As with any project of this size, a number of issues and options must be carefully examined in consultation with industry and other Government Departments.

The Government's Maritime Helicopter procurement strategy is not designed to favor any particular competitor. Each interested competitor will be required to respond to the Requests for Proposals when they are published, and they will be evaluated based on their ability to meet the stated requirements.

Most importantly, the Government will ensure that the new helicopter meets the Canadian Forces' operational requirements. This imperative will not be compromised.

I can confirm that the Minister of National Defence met with Mr. Peter Smith, President of the Aerospace Industry Association of Canada, on Thursday 15 March 2001 to discuss various topics of interest related to Canadian aerospace industry manufacturers.

#### REPLACEMENT OF SEA KING HELICOPTERS—RISK ANALYSIS PRIOR TO SPLITTING PROCUREMENT PROCESS

*(Response to question raised by Hon. J. Michael Forrestall on March 29, 2001)*

##### QUESTION:

Why did the splitting of the procurement contract for the Maritime Helicopter Project occur without risk analysis, discussion papers or standard operating procedures?

##### ANSWER:

— All decisions regarding the procurement strategy for the Maritime Helicopter Project, including the decision to proceed with a "split" or "unbundled" contract included a thorough assessment of risks and benefits.

##### QUESTION:

Did the government split the program without warning the departments involved to exclude the EH-101 from the competition and direct the contract through one means or another to Eurocopter?

##### ANSWER:

— The departments involved in the Maritime Helicopter Project were responsible for developing the various options presented to government for all aspects of the procurement strategy, including the choice between proceeding with one versus two competitions.

— The acquisition of the new Maritime Helicopter is based on a fair, open and transparent competitive process.

— The procurement strategy is designed to acquire a helicopter that meets the needs of the Canadian Forces, within a tight time frame and at the lowest possible cost to taxpayers.

#### HUMAN RIGHTS

##### RATIFICATION OF INTER-AMERICAN CONVENTION ON HUMAN RIGHTS

*(Response to question raised by Hon. Noël A. Kinsella on March 1, 2001)*

We appreciate the comments from the Honourable Senator on the American Convention on Human Rights. The Government of Canada is committed to human rights and Canada does play an important role as a member of the Organization of American States. Our acceptance of the American Declaration on the Rights and Duties of Man clearly demonstrates this commitment. Canada takes adherence to international conventions seriously and wishes to ensure that all provinces, territories and the federal government are in agreement. There have been a number of consultations between officials from different jurisdictions and an examination of the issues raised is ongoing.

#### JUSTICE

##### COST OF GUN CONTROL REGISTRATION

*(Response to question raised by Hon. Terry Stratton on March 13, 2001)*

The Minister of Justice has recently indicated that the total costs for the Canadian Firearms Program, over the six year period from 1995-96 through 2000-01, are approximately \$489 million. This figure includes those costs related to the RCMP's responsibilities under the Program. This figure also includes all costs incurred by each provincial jurisdiction that directly administers the program.

The licensing component of the Program is almost complete and the Minister is moving to ensure that the registration component is done in the most efficient manner possible, not only with respect to cost but also with respect to client service to Canadians. In this regard it is the Minister's intent to simplify the Program's compliance requirements and to streamline and modernize both the administrative and systems processes with a view toward ensuring higher rates of public compliance, continued public support and enhanced public safety.

#### ENVIRONMENT

##### EMISSIONS FROM ONTARIO POWER GENERATION INC. PLANTS—RESPONSE TO LETTER FROM ATTORNEYS GENERAL OF NEW YORK AND CONNECTICUT

*(Response to question raised by Hon. Mira Spivak on March 13, 2001)*

The Department of the Environment deems that the attached letters answer Senator Spivak's questions.



Mr. Eliot Spitzer  
Attorney General  
State of New York  
120 Broadway  
New York NY 10271  
USA

Dear Mr. Spitzer:

Thank you for your letter of January 31, which was co-signed by Mr. Richard Blumenthal, Attorney General for the State of Connecticut, concerning Ontario Power Generation's proposal to install selective catalytic reduction units at its Lambton, Nanticoke and Lakeview coal-fired power plants.

The issue of transboundary air pollution is a major concern in Canada and I consider clean air to be a top priority. As you know, under the Ozone Annex to the Canada-United States Air Quality Agreement, Canada committed to an annual 39 kilotonne nitrogen dioxide emission cap to be in place by 2007 in the Ontario portion of the Pollutant Emission Management Area. Such a cap would mean that fossil fuel-fired power plants will meet an average nitrogen oxide (NOx) emission rate of 0.15lb/MMBtu throughout the year, not just during the May to September ozone season as U.S. power plants would be required to do under the NOx SIP Call program. This will result in a 50% reduction in NOx emissions. Similar commitments by the U.S. to annual NOx reductions will be important to Canada in terms of acid rain, smog and particulate matter (PM) issues.

Ontario Power Generation has proposed some initial steps to reduce air pollution. I recognize that the project does not, by itself, achieve the reductions required to meet the commitments in the Ozone Annex or the Canada-Wide Standards. Further efforts will be required to meet these standards, as well as standards for particulate matter, mercury, acid rain and climate change. I understand that Ontario Power Generation and the provincial government are working to address these issues.

The federal government is determined to meet Canada's commitments under the Ozone Annex and is taking concrete steps to that end. Attached is an information kit on measures I will be announcing on February 19.

As you know, your letter is a formal request under section 47 of the *Canadian Environmental Assessment Act*, which requires a response from both the Minister of Foreign Affairs and me. You request that we refer Ontario Power Generation's project to a review panel for an environmental

assessment. I have asked the Canadian Environmental Assessment Agency to advise me on the applicability of the Act in these circumstances, and to obtain advice on the potential for adverse transboundary environmental effects as a result of the company's project. These are the key matters for Minister Manley and me to consider before deciding whether it is appropriate to refer the project to a mediator or a review panel in accordance with section 47. We will proceed on this matter as quickly as possible.

I very much appreciate your interest and support on this issue. It is important that we maintain the strong links that have been forged in the context of the Ozone Annex negotiations, and continue to work together on improving the quality of the air that crosses our mutual boundaries.

Yours sincerely,

David Anderson, P.C., M.P.

c.c.: The Honourable John Manley, P.C., M.P.

The Honourable Elizabeth Witmer, M.P.P.

Mr. Richard Blumenthal  
Attorney General  
State of Connecticut  
P.O. Box 120  
Hartford CT 06141-0120  
USA

Dear Mr. Blumenthal:

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Yours sincerely,  
David Anderson, P.C., M.P.  
c.c.: The Honourable John Manley, P.C., M.P.  
The Honourable Elizabeth Witmer, M.P.P.

[Translation]

## ORDERS OF THE DAY

### CANADIAN HUMAN RIGHTS COMMISSION

APPEARANCE OF COMMISSIONER  
BEFORE COMMITTEE OF THE WHOLE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, pursuant to the motion proposed by the Honourable Senator Kinsella and passed in this

house to the effect that the Senate do resolve itself into Committee of the Whole to hear the Commissioner of the Canadian Human Rights Commission, I should like to inform the Senate that the date and time agreed upon with the Commissioner of the Canadian Human Rights Commission is May 1, 2001, at 4 p.m.

### FEDERAL LAW-CIVIL LAW HARMONIZATION BILL

THIRD READING—MOTION IN AMENDMENT—  
DEBATE CONTINUED—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator De Bané, P.C., seconded by the Honourable Senator Poulin, for the third reading of Bill S-4, to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law:

And on the motion in amendment by Senator Grafstein, seconded by the Honourable Senator Joyal, P.C., that the bill be not read a third time but that it be amended:

(a) on page 1, by deleting the preamble; and

(b) in the English version of the enacting clause, on page 2, by replacing line 1 with the following:

"Her Majesty, by and".

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, following discussions held with opposition senators, agreement has been reached. Pursuant to rule 38, I move, seconded by the Honourable Senator De Bané:

That, in relation to Bill S-4, A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law, no later than 3:15 p.m. Thursday, April 26, 2001, any proceedings before the Senate shall be interrupted and all questions necessary to dispose of third reading of the Bill shall be put forthwith without further debate or amendment, and that any votes on any of those questions be not further deferred, and

That if a standing vote is requested, the bells to call in the Senators be sounded for fifteen minutes, so that the vote takes place at 3:30 p.m.

[English]

**The Hon. the Speaker:** Before putting the question, honourable senators, I refer honourable senators to rule 38, which deals with this type of motion. The motion does not require notice and it is not debatable. A senator has risen to ask a question. That could be done only if there is leave granted for a question to be put.

Is the Honourable Senator Prud'homme requesting such leave?

**Hon. Marcel Prud'homme:** Yes, Your Honour.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

• (1500)

**Senator Prud'homme:** Honourable senators, the question is simple. Since the Deputy Leader of the Government is a good friend, I do not want to add more embarrassment than necessary. However, he mentioned rule 38, et cetera, and said, in part, "after discussion with the opposition, we came to the agreement that..."

A call would have been sufficient. Regardless of public opinion, I am not a member of the opposition. I am an independent senator, and I am not alone. When he says "after discussion with the opposition," I feel either left out or part of the opposition. I am not part of the opposition; nor was I part of the deliberations.

I know that the honourable senator has enough problems. He does not need to consult with me all the time. However, on this issue, a phone call would have been sufficient. I would not have opposed or even objected to what he had to say. I hope that in the future those of us who are independent will not be lumped in with those members of the opposition who have been consulted. Although I may be sitting where I sit, there are many Liberals sitting opposite me who, I am sure, do not claim to be members of the opposition.

I hope my point is clear. I know Senator Robichaud will take it under advisement.

**The Hon. the Speaker:** Honourable senators, I take Senator Prud'homme's remarks as a comment. Does the Honourable Senator Robichaud wish to comment?

[Translation]

**Senator Robichaud:** Honourable senators, the remarks by Senator Prud'homme are duly noted.

**Hon. Pierre Claude Nolin:** I request leave to ask Senator Robichaud a few questions.

[English]

**The Hon. the Speaker:** Is leave granted for the Honourable Senator Nolin to ask another question, honourable senators?

**Hon. Senators:** Agreed.

[Translation]

**Senator Nolin:** I understand Senator Robichaud's motion. We are now debating a motion in amendment and the senator who wishes to speak to this amendment may do so.

Between now and Thursday at 3:30 p.m., it is possible that another motion in amendment may be moved. Will a senator who has already spoken to the motion in amendment be permitted to speak a second time? Will all votes be held at the same time, at 3:30 p.m. next Thursday? If so, what will be the order of speeches?

For example, if I wish to speak to Senator Grafstein's amendment, it is possible that I may also wish to speak during the debate on the main motion. This would be a second speech for me. Will I be permitted to make it?

**Senator Robichaud:** Honourable senators, without wishing to direct the debate and say how we should proceed, I will simply say that we have many hours between now and Thursday to debate motions in amendment.

As Senator Nolin said, a senator may speak to one or the other of the amendments, and to the main motion. Since this bill has been on the Orders of the Day for some time now, since it has been considered in committee, and since senators present have been able to express their views on the amendments and on the bill itself, we think that those who wish to speak to the amendments, if they are moved, will have sufficient time to do so.

**Senator Nolin:** Honourable senators, if I understand Senator Robichaud correctly, a senator may speak once to the amendment and once — if he or she wishes — to the main motion.

[English]

**The Hon. the Speaker:** If there is time, Senator Nolin.

[Translation]

**Senator Robichaud:** Honourable senators, perhaps the Honourable the Speaker is able to answer this question much better than I, but I believe that a senator is entitled to speak to the main motion and to the amendments moved.

[English]

**The Hon. the Speaker:** Honourable senators, is it your pleasure to adopt the motion?

**Some Hon. Senators:** Agreed.



**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** On division.

Motion agreed to, on division.

[Translation]

## BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, we would like to begin with Item No. 4, that is second reading of Bill C-2, and then to revert to the order as set out, that is Nos. 1, 2, 3 and 5.

[English]

## EMPLOYMENT INSURANCE ACT EMPLOYMENT INSURANCE (FISHING) REGULATIONS

### BILL TO AMEND—SECOND READING

**Hon. Jane Marie Cordy** moved the second reading of Bill C-2, to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations.

She said: Honourable senators, it is my great pleasure to speak in favour of Bill C-2, to amend the Employment Insurance Act.

I am very proud to be in the Senate as a representative from Nova Scotia. I am always quick to identify myself as a Maritimer because of the joy that I take in living there. There are many different perceptions of Atlantic Canada. Where you come from would probably have much to do with how you see Atlantic Canada. Atlantic Canada has faced many economic challenges over the years, but this was not always the case.

At the time of Confederation, Nova Scotia had a strong economy, a robust manufacturing sector, and was home to some of the pre-eminent financial institutions in this country. Consolidations and takeovers transferred the ownership of these industries to Central Canada. Later, much of the production and the associated jobs shifted as well, leaving behind an economy more dependent on seasonal industries.

Honourable senators, thanks to the work of this federal government, as well as local governments and numerous community groups in Atlantic Canada, many people in this region have moved away from seasonal employment. For the last number of years, Newfoundland and Nova Scotia have been leading the country in economic growth. It looks as though Newfoundland will be at the top again this year.

In Nova Scotia, the percentage of people working in seasonal jobs has been declining steadily over the last number of years while the number of jobs created in information technology

continues to rise. Silicon Island has been developed with some help from the federal government and is home to many high-tech employers in Cape Breton.

For example, MediaSpark is a software development and multimedia production company. Their products include a broad selection of business, education and consumer software titles and tools. MediaSpark software can be found in tens of thousands of homes, schools and offices in over 100 countries worldwide.

Also, Virtual Media Productions Limited, East Quest Communications and many other world-class companies work out of Silicon Island in Sydney.

• (1520)

The Liberal government of John Chrétien deserves much of the credit for helping Atlantic Canada's economy develop to better reflect the changing world economy. Yet many Atlantic Canadians still depend on seasonal industries to provide them with work, and many Canadians still depend on seasonal workers to provide them with essential natural resources.

That is why, honourable senators, the Liberal government will not turn its back on seasonal workers, or any one else, for that matter.

The changes proposed in Bill C-2 will further strengthen Canada's social safety net. I do not wish to give you the impression that this bill is just a Maritime bill. Indeed, it is not. Many of the changes reflect a need to provide support for people in other areas of Canada, both urban and rural.

This dedication by the federal government to all Canadians, from coast to coast to coast, is a record of which everyone should be proud. As well, one of the lasting legacies of this government and the two Liberal governments before it will be the performance of Canada's economy. There are 2.1 million more jobs in Canada today than when Jean Chrétien took office in 1993. We know that all Canadians benefit from this economic growth in one way or another. Canadians are experiencing a much higher standard of living, with a greater emphasis on healthy living.

Honourable senators, that is why the government introduced and extended parental leave in December of 2000. The most important time in a child's development is from birth to age three. The government identified the need and the benefits of allowing a parent to stay home with a new-born child for the first year after birth. The government also wanted to remove anything that may discourage a parent from taking advantage of this wonderful program. Therefore, the regulations governing re-entrance eligibility for regular benefits will be amended to ensure that parents of young children who return to the labour market are not unduly burdened.



As well, the government is changing regulations governing self-employed fishers so that similar parental benefits can also be extended to them. This bill will make these amendments retroactive to December 31, 2000 so that fishers can have access to the same types of benefits as other Canadians. This is the fair thing to do.

Honourable senators, in 1996, the government made changes to what was then the Unemployment Insurance Act and created a system of employment insurance. This new system placed an emphasis not only on providing financial support for those workers who were unemployed but also to more actively help them prepare for, to find and to keep work.

At that time, approximately 40 per cent of people who used EI were not doing so for the first time. The government introduced the intensity rule, and the idea was that for every 20 weeks of benefits claimed in the last five years, the claimant would drop 1 per cent of their benefit, which was 55 per cent of their average income. This process would continue each year, reducing the claim to a minimum of 50 per cent. This was supposed to give workers a disincentive to going back on employment insurance.

Unfortunately, that change was not effective. Last year, the number of claimants who were repeat users of EI was approximately 40 per cent, the same as in 1996. The rule was not having the desired effect. In fact, it was causing great hardship to many Canadians who depended on employment insurance benefits. The government has evaluated the program and is making the appropriate changes in this legislation.

Despite the phenomenal performance of the Canadian economy and the record number of jobs created, some Canadians are only making enough money to make ends meet. For instance, the average income in Metro Toronto, one of Canada's most expensive cities in which to live, is only \$28,980. By the time you pay for rent, food and clothing, there is not a whole lot left. These people are by no means rich, and I dare say the people in these areas making \$39,000 could not be considered high income either. That is why this legislation is increasing the high-income clawback threshold from \$39,000 to \$48,750.

The government has recognized that if you live in Vancouver or Calgary and make \$39,000 per year, you are by no means high income. For those Canadians who do earn more than the high-income threshold, the 30 per cent claw back will only apply to the person's income over and above the \$48,750.

This is a measure aimed at helping those Canadians who are working hard to make a living in urban centres where a dollar may not go as far as it might in a rural community.

Honourable senators, when the clawback was initiated, it was intended for high-income Canadians who were repeat users of

the EI system. If a Canadian is receiving EI benefits for the first time, by definition that person is not a repeat offender. For that reason, the clawback will not affect people receiving benefits for the very first time. The government has recognized these situations and has improved the legislation.

The Canadian government has been fortunate, and thanks to sound financial decision making by the government, we find ourselves with a budget surplus — an amazing feat if you think back a very short 10 years ago. We must not allow this run of prosperity to distract us from the reality that the economy does naturally slow down from time to time. When this happens, a surplus like we see in the Employment Insurance Fund evaporates quickly, and the government is responsible to ensure the fund has enough money to meet the demands of the system.

The government also understands that entrepreneurs and small business owners can work wonders if more of their money is left in their pockets at the end of the day. The Government of Canada has, for this very reason, reduced the EI premium rate from \$3.07 in 1994 to \$2.25 in 2001, a saving of approximately \$6.4 billion for employers and employees.

In December 1999, the Finance Committee of the other place concluded that the rate-setting process needed to be revised. In September 2000, the government announced that it would undertake a thorough review of the EI rate-setting mechanism. In the meantime, the Governor in Council would set the rate for two years and two years only. This will allow employers and employees to know that the EI premium will be predictable and stable while this important review takes place.

Honourable senators, employment insurance is a dynamic program. It is like a dory on the ocean, constantly changing, reeling and rolling to offset the changes taking place around it. The economy of yesterday is not the same as the economy of today. The jobs that are important today may become obsolete tomorrow. No one knows. It would be wrong of a government to think that it could put into effect an insurance system and walk away from it, never having to worry whether it is doing what it is was intended to do. For this reason, this legislation includes an annual evaluation mechanism that allows parliamentarians to evaluate the effectiveness of any changes made to the program.

Honourable senators, the purpose of employment insurance is to provide additional help to those workers who are looking for work. The new approach to employment insurance introduced by the government in 1996 has proven to be effective. The adjustments made by Bill C-2 will ensure that we stay on the right track.

• (1520)

Honourable senators, the changes made in this bill will strengthen the EI program and help many Canadians who find themselves out of work get back to work quickly and easily.

The Government of Canada is fulfilling a promise it made to Canadians during the last election. It has introduced Bill C-2 because that is one of the things it was elected to do. I look forward to your comments, and I hope that you can support this bill because it will help to further support many Canadians when they need it the most.

**Hon. Lowell Murray:** Honourable senators, I cannot forbear to wonder aloud how many thousands of Senator Cordy's fellow Nova Scotians who have had to avail themselves of employment insurance will feel being described by her and the government more than once as repeat offenders. What in the name of God are they offending or whom are they offending, besides the economists in the Department of Finance? I think that is an unfortunate turn of phrase.

In her defence, I will say it does not originate with her. I have read in the transcripts of the House of Commons committee the same phrase, dropping easily from the lips of officials and even politicians in the other place.

Putting that aside, it did occur to me, listening to Senator Cordy, that it was a prudent choice on the part of the government to have selected her as sponsor of this bill. As a relatively new senator, her credibility is not strained by virtue of having denounced the rather modest reforms to unemployment insurance brought in by the Tory government in 1989-90, nor is she compromised by virtue of having lavished praise on the draconian new EI bill brought in by the Chrétien government in 1996. However, I do observe that she made a brave effort to put the best face on those changes in her remarks today. She glossed over the essence of this bill, which is to recant and repent some of the major provisions of the 1996 bill.

The essence of the bill was and is to repair some of the political damage done by the 1996 changes. Nothing is wrong with that. It had, apparently, the desired effect. The bill started last fall as Bill C-41. It was debated in the House of Commons, but the parliamentary process was overtaken by dissolution of the Thirty-sixth Parliament, and the bill died on the Order Paper. However, it was very much a part of the Liberal Party campaign during the election, notably in the Atlantic provinces and Quebec, and, as I say, had the desired effect, apparently. The Liberal Party was able to recoup some of the losses it had sustained in the previous election. There is nothing wrong with that as a motivation. This is a parliamentary democracy. While the results were not totally to the satisfaction of some of us on this side of the house, it is an ill wind that does not blow someone some good, and I am glad some of the people in the Atlantic provinces and Quebec will have some marginal improvements in their fortunes as a result of this bill.

I wish to say a word about the bill and describe the immediate background to it, and then if I may impose on honourable senators to that extent, make some observations about the state of employment insurance today. I will talk about how a simple and

sound unemployment insurance program has now become, over a period of 60 years, so overloaded with sometimes conflicting roles for which, in many respects, it is inadequate and has become a program, in my humble opinion, that has lost its way.

As I said, the bill is intended to and has had the effect of repairing some of the political damage done by the 1996 changes. Repairing the social and economic damage, however, will take much longer. If you look at what the bill does, and I thank Senator Cordy for giving a good account of the provisions, it does raise the income level at which the clawback of benefits begins, from \$39,000 to \$48,750. It sets a single rate of clawback at 30 per cent. One might call the middle class the victims. Some more articulate and better organized people are being placated by this bill.

As Senator Cordy pointed out, it also eliminates the infamous intensity rule. The minister herself has described the intensity rule as having proved to be, I think I am quoting her directly, "punitive and ineffective." Senator Cordy was kind enough not to use those words, but we all got the point. The intensity rule is gone.

The victims of the government's policy in this area since 1994 are in the tens of thousands. In the 1994 budget, the government reduced employment insurance benefits by \$2.4 billion. In 1996, the changes in Bill C-12 reduced EI benefits by a further \$2.1 billion. Thus the unemployed became the first conscripts in the battle against the deficit, just as so often in the past when the unemployed and those on low incomes were the first conscripts in the battles against inflation.

Dues in 1992-93 were \$18 billion, and by 1996-97 they are down to \$12 billion, and there is no way a drop of 2 percentage points in the unemployment rate over the same period could have accounted for such a sharp decline in benefits.

The EI changes or UI changes, and I will use the terms interchangeably, between 1994 and 1996, increased the number of people below the poverty line in this country, and they reduced the incomes of recipients who were already below the poverty line, driving them deeper into poverty.

My authority for that statement is a study that was put out by Statistics Canada in March 2000, entitled: "Social Transfers, Earnings and Low-Income Intensity Among Canadian Children, 1981-96: Highlighting Recent Developments in Low-Income Measurement." The study was authored by Professor John Myles of Florida State University and Statistics Canada and Mr. Garnett Picot of Statistics Canada.

Honourable senators know that the famous low-income cut-off is really a head count of the poor in Canada. It determines the poverty rate in the country. These scholars are getting at low income intensity, the gap between the low income cut-off and the depth of poverty below that cut-off, the depth of low income.



• (1530)

They make the point in their study that during the recessions of the early 1980s and early 1990s, when employment earnings were declining among low-income Canadians, the Canadian tax transfer system offset this and prevented income inequality from widening and, with regard to the most recent recession, they said:

Rising transfers between 1989 and 1993 considerably muted the impact of recession.

What do we find since then? Thanks to a table they published in their document, we find that for all families with children, average UI benefits between 1993 and 1996 declined by 44 per cent. For two-parent families, average UI benefits over that period, 1993 to 1996, declined by 43 per cent. For single-parent families over the same period, UI benefits declined by 47 per cent.

They conclude:

Low-income intensity in 1996 based on the LICO-IAT —

— low income cut off-income after taxes —

— was 20% above the highest level observed during the 1990s recession, and fully 50% above the last level observed at the peak of the last business cycle.

Honourable senators, we should not underestimate the damage done to low-income families by the government's rather arbitrary slashing of UI benefits in the interests of fighting the deficit.

The result of the 1996 bill is that fewer people are being covered and that people are working longer hours for smaller benefits paid out over a shorter period. That is the reality of what the 1996 bill accomplished and, honourable senators, Bill C-2, the measure before us today, will not significantly change that situation.

Honourable senators, allow me to put two more numbers before you. The first number I want to place on the record is pretty well known to everyone. It is the size of the cumulative surplus in the Employment Insurance Fund. As of March 31, the end of the fiscal year, it was \$36 billion in round figures. In one year from now, the cumulative surplus will have reached \$43 billion. In other words, in the fiscal year that started just this month the EI Fund will register a surplus on an annual basis of \$7 billion.

The Chief Actuary of the Employment Insurance Commission has said repeatedly that this surplus is between three and four times what would be needed in a surplus as a prudent reserve against a downturn in the economy. It follows that the premiums being collected from employers and employees are of the same order of magnitude. They are far higher than is necessary.

Honourable senators, there is a \$36-billion surplus in the EI Fund, heading for \$43 billion. Against that background, I ask you

to consider that 37 per cent of unemployed Canadians actually receive EI benefits. Thirty-two per cent of unemployed Canadian women actually receive EI benefits. The surplus in the fund is heading toward \$43 billion, and 37 per cent of unemployed Canadians are collecting benefits. How do you explain that? How can you justify that? Surely there is a disconnect between policy and reality. Surely there is a disconnect between the program and the need that it is supposed to fill.

I know that explanations will be offered by Senator Cordy's friends in the Department of Finance and elsewhere. They will tell us, as she alluded to in her speech, that the nature of employment has changed and therefore the nature of unemployment has changed; that there is more part-time employment, more self-employment and all the rest of it. If that is the case, surely it is incumbent on the government and us, who have some role of political leadership in the country, to be turning our attention to the need for an employment insurance program that is in fact targeted to the new circumstances in the labour market.

Again for the record, in 1990, 73 per cent of unemployed Canadians received benefits. In 1993, that number was down to 56 per cent. In 1999, as I said, 37 per cent of unemployed Canadians and 32 per cent of unemployed women received benefits.

Parenthetically, there are those who find this state of affairs more than acceptable and in fact desirable. When I read the transcripts of the House of Commons committee that studied this bill, I was rather astonished to learn that Professor Pierre Fortin, who I think is widely regarded as a progressive economist, seems to think that because the situation of only 37 per cent of unemployed receiving benefits is becoming comparable to the situation in the United States, Canada is moving in the right direction. I find that puzzling. I hope I did not misunderstand and that I am not misrepresenting what he said.

As we all know, the EI Fund is totally financed by the premiums paid by employers and employees. Not a penny of government money goes into that fund. Yet the surplus is being used to pad the government's revenue figures and make the government's budget look better.

To illustrate what I mean, in the fiscal year 1997-98, had it not been for the EI annual surplus of \$7.2 billion, Mr. Martin's budgetary surplus of \$3.5 billion would have been a deficit of \$3.7 billion. In 1998-1999, had it not been for the EI annual surplus of \$6.6 billion, Mr. Martin's budget surplus of \$2.9 billion would have been a \$3.7-billion deficit. In 1999-2000 and in 2000-2001, the fiscal year that just ended last month, Mr. Martin's budget surpluses, which are somewhere between \$12 billion and \$15 billion, would have been cut in half or more were it not for the \$7.2 billion and the \$7.7 billion surpluses achieved in those years in the EI Fund. The fund is being used to pad the government's revenue figures.



What do we say about the spending purposes for which the EI Fund is used? The fact is that it is being used for an array of programs, some of which are only indirectly, if at all, related to the unemployed. In the fiscal year that just began at the beginning of this month, \$10 billion is listed for what are called income benefits. Of that, \$7.5 billion will go to what are called regular benefits, and \$2.5 billion will go for fishermen's benefits, sickness, maternity, parental leave, et cetera, some of the purposes to which Senator Cordy referred.

A further \$2.2 billion is scooped up from EI for labour market and re-training programs. Of that, \$900 million goes in transfers to the provincial governments and \$1.3 billion goes for a variety of HRDC programs, wage supplements, grants, loans and loan guarantees, earning supplements and infrastructure.

• (1540)

EI premiums, paid for totally by employers and employees, are simply being scooped up by the government, in effect to finance the Department of Human Resources Development.

Now, I will provide a bit of history. The UI Fund was integrated into the government's accounts in 1985-86, as a result of comments that had been made in previous years and, indeed, a reservation that had been attached to the public accounts by the Auditor General of the day, Mr. Kenneth Dye. In a nutshell, the Auditor General's position was that if the government was going to be responsible for any deficit, as it was, and if the government was able to lay hands at will on any surplus, as it is, then the funds should be consolidated into the government's accounts.

The present Auditor General, Mr. Denis Desautels, agrees with his predecessor and thinks this is a proper accounting procedure. However, he appeared before the House of Commons committee on this bill on March 21. He used expressions such as "notional fund," "notional account" and "tracking account" to explain that the \$35 billion sitting in the EI account is not really cash in a separate account. It is there consolidated in the government's accounts. As he says, there is no separate bank account.

Then he pointed out that the Employment Insurance Act requires that an accounting of EI revenues and expenditures be kept. Over time, he says, if the account were to break even, as contemplated by the act, its inclusion in the government's accounts would have little effect.

He reminded the committee that the act requires that EI premium rates be set to ensure enough revenue to cover program costs while keeping rates relatively stable over a business cycle.

Then he referred to the growing annual surplus, and to the constantly growing cumulative surplus in the fund. He quoted the Chief Actuary on the smaller surplus, and the reduction in

premiums that will be indicated by virtue of the law as it stands, and by virtue of the unnecessarily large surplus that is there now. I quote Mr. Desautels directly from the transcript of the committee on March 21:

In the meantime, the balance of the EI Account has continued to grow and will likely exceed \$35 billion by the end of the month. At that level, I would be hard pressed to conclude that the intent of the law has been respected.

One of the things I always liked about Mr. Desautels is his gift for understatement.

To make matters worse, Bill C-2 — and my friend Senator Cordy did not mention this — cuts out the EI Commission from the premium-setting process for the years 2002 and 2003. It delivers this process totally into the hands of — Senator Comeau says the PMO — what Donald Savoie calls the "focus group," the cabinet, which I am sure will have some say. Actually, it is the Governor in Council.

I just want to read a sentence or two from Mr. Desautels' testimony before the House of Commons committee that considered this bill:

Clause 9 of Bill C-2 proposes to suspend the existing process for setting rates and have the Governor in Council set the rates for 2002 and 2003. The introduction of Bill C-2 has not alleviated our concern. There is no requirement in the bill for the interim-rate-setting process to be more transparent. There's also no reference to any due process that needs to be followed, one that may include receiving advice from the chief actuary and consulting the commission.

Furthermore, unlike with the introduction of Bill C-44, there's no information on or commitment to review the rate-setting process while section 66 is suspended. In other words, the scope and nature of the review, if any, are unclear.

Honourable senators, it does not take a particularly suspicious mind to surmise that the legal advisers to the government are becoming increasingly edgy about the obvious non-compliance of the government with the law so far as the premiums and the surplus are concerned. It does not take a very suspicious mind to surmise that what the government has in mind is to bring, at some later date, an amendment to the law that will, in fact, deliver the premium-setting process totally into the hands of the cabinet. We will then have in law, as we practically have in fact today, a payroll tax on employers and employees that will incidentally have something to do with employment insurance —

**Some Hon. Senators: Shame.**

**Senator Murray:** — but really have a lot to do with financing the general spending programs of the government. If this happens, there will be an unholy row with employers and employees in this country, and probably in Parliament as well. However that may be, going in this direction, from an economic and social point of view, is to perpetuate an approach that is dubious and counterproductive.

Let me trace briefly some of the history in this area.

Unemployment insurance began in 1942. One of the things I was surprised to learn in my readings on this matter in preparing for this debate was that Canada was the last of the western industrialized countries to bring in a program of unemployment insurance. In my naivety and perhaps smugness, believing that we were always to the forefront in these matters, I should have thought we would have been one of the first. We were actually, according to the government's documents, the last western industrialized country to bring in a program of unemployment insurance.

It had been talked about for many years. It had been talked about from the end of the First World War. An abortive attempt had been made in 1935 by the Bennett government to bring in an unemployment insurance program. It was opposed in Parliament by Mr. King and the Liberals on the basis — correctly, as it turns out — that such an initiative was *ultra vires* the Dominion Parliament. When Mr. King and the Liberals returned to office in 1935, they referred the Bennett bill to the Supreme Court of Canada and on to the Judicial Committee of the Privy Council, who found that, yes, it was *ultra vires*.

Prime Minister King went about the business of obtaining the unanimous agreement of the provinces for a constitutional amendment in 1940. He obtained it, and the amendment added unemployment insurance to section 91 among the exclusive powers of the federal Parliament.

I recite this bit of constitutional history because my hunch is that it is significant in this sense. Over the years, governments and Parliaments have used our exclusive jurisdiction over unemployment insurance as a cover to add all kinds of programs and parts of programs that ordinarily would be questionable from a constitutional point of view. They lump it in with unemployment insurance and, voila, it is within our constitutional competence.

Anyway, they got going in 1942 with the program, which was intended, as I said, to provide insurance to those "willing and able to work but temporarily unemployed for reasons beyond their control."

A large number of people were not covered by the original employment insurance regime, people like teachers and civil

servants who would not normally expect to be unemployed, or who, because of the seasonal nature of their work, were not considered eligible for coverage.

It functioned as an insurance program pretty well until the 1950s. At that point, supplemental benefits were introduced to take care of people who had fallen just short of qualifying for UI. Seasonal benefits were then introduced. The major departure from the so-called "insurance principles" was in 1956, when the coverage was extended to fishermen. In 1971, the Honourable Bryce Mackasey brought in reforms, including regionally extended benefits. To give you an idea of what these reforms wrought, the unemployment rate in 1971 was 6.4 per cent. In 1972, the unemployment rate had dropped to 6.3 per cent and yet benefit payments under UI more than doubled, from \$891 million in 1971 to \$1.8 billion in 1972.

• (1550)

By the end of 1972, I believe the fund was in deficit for the first time. We can confirm that, however. Notwithstanding more people paying premiums, the premiums themselves had been increased and there had been a drop in the unemployment rate, yet the payments going out had more than doubled in the course of a year. The year 1975 saw the beginning of what are called developmental uses of the fund, training allowances and the like. In 1976, job creation programs were introduced, subsidization of community projects, work-sharing, sickness and maternity benefits, and all the rest.

Honourable senators, I believe that the fund has become overloaded in a policy sense, being funded entirely by employers and employees, paying premiums and supporting a surplus at levels that clearly violate the intent of the law. The employment insurance program has become a fund under which only 37 per cent of unemployed Canadians are receiving benefits; a fund which has been bent out of shape to serve the purposes for which it was not suited — purposes that it is not achieving. I believe that is the key point.

In regard to seasonal and fishermen's benefits, one commission after another has told us that these should be part of a separate income support plan. When Mr. Mackasey brought in his reforms in 1971, he told Parliament that the fishermen would continue to be part of EI only for the time being until the government had put the finishing touches on a special program for them. That was 30 years ago, and we are still waiting for the special program for fishermen and the special program for seasonal workers.

In its own way the fund tries to achieve the goal of income redistribution, but is manifestly unsuited because it is inequitable and inefficient in that regard. There is not the kind of income test that would be needed for a proper program of income redistribution.



The government is trying to administer maternity benefits and parental leave through an employment insurance program that most countries administer through their social security systems. Today I asked the Leader of the Government in the Senate about the finding of a tribunal in Winnipeg a couple of weeks ago, which ruled that Canada's employment insurance laws are constitutionally unfair to women because as primary caregivers it is harder for them to work the hours needed to qualify. The tribunal found that when a mother works part-time, because of her unpaid parental responsibilities, she should not receive inferior employment insurance coverage. The rules were said to violate the equality provision under the Charter of Rights and Freedoms.

The government may choose to appeal this decision to the Federal Court of Appeal. They may lose. They may decide that the thing to do is add another series of amendments to try to patch the thing up, but it really has not worked well in that sense. One commission after another, as I have said, has told us that we need more comprehensive reform.

We have regional benefits and regional job creation programs through the EI fund. Senator Cordy said in her opening remarks that many Nova Scotians had moved away from seasonal industries. I thought she would have been more correct to say that many Nova Scotians moved away, period. That is not so much a personal comment as it is a comment on another document that has been put out within the last few weeks by Statistics Canada, which sets out the population projections for Canada, the provinces and the territories. If you take a look at the document, EI is not helping much to stop the haemorrhaging of population from the Atlantic provinces and Quebec. Nor does it appear it will do so in the future.

Statistics Canada did projections based on low-growth, median-growth and high-growth scenarios. The projections are for the 25-year period up to 2026. Just to take the median-growth scenario, according to these projections the population in Newfoundland will decline in absolute numbers year after year. Every year there will be net out-migration and, over the period, an average annual decline of 0.3 per cent. As I read these tables, Nova Scotia, which has had net out-migration more years than not since 1980, will have continued net out-migration for each of the next five years, then an overall population growth over the 25-year period at an average annual rate of one-tenth of 1 per cent. There is your population growth in Nova Scotia.

According to these projections New Brunswick — and this is the median-growth scenario — will have net out-migration every year, without exception, to the year 2026, and an overall population decline at an average annual rate of 0.1 per cent. Quebec will have interprovincial out-migration every year without exception for the next 25 years, and an average annual growth rate of one-tenth of 1 per cent.

Honourable senators, I put these figures on the record to reinforce my view that employment insurance, and all the billions of dollars that are being spent on various programs and

initiatives under its umbrella, is really no substitute for a proper regional development program for those parts of the country that need it. We must stop using EI as a substitute or even a significant supplement for a regional development program. It just does not work.

As I have stated, honourable senators, the problems of the employment insurance system have been amply documented and some alternatives suggested. Prime Minister Diefenbaker appointed the Gill Royal Commission in 1961, and it reported, I believe, in 1962. Prime Minister Trudeau appointed the Macdonald Royal Commission on our economic future in 1983, which dealt with this and related matters. Prime Minister Mulroney appointed the Forget Commission in 1985 on the unemployment insurance system.

Just for your entertainment, honourable senators, I wish to point out to you that the problems we have had were certainly foreseen. I will quote you a description put out by Employment and Immigration Canada of the Gill Royal Commission report in 1962. Employment and Immigration Canada said:

The Committee's report said there was no insurance scheme that could cope with the whole unemployment problem. It felt that any attempt to make it do so merely forced distortions so that the basic principles could not be maintained and the plan would be pushed from amendment to amendment with no sound guiding principles on which to base decisions.

That was 1962. By 1986, we had this comment from the Forget Royal Commission:

The program has grown like a weed. New elements have been added to meet emerging needs, with complex adjustments to control undesirable side effects. The result, we were told, is a program that tries to meet diverse and sometimes contradictory objectives and that has become almost impossible to administer.

• (1600)

Honourable senators, I do not know that this bill need detain the Senate or its committee overlong. I presume that it will be referred to the Social Affairs Committee and, while I am not a member, I may join for the duration of the committee's study of this bill. It will be up to the committee to decide what it will do with the bill.

Most of the witnesses, and there were over 60, who appeared before the House of Commons committee, had very little to say about the bill but they did have an awful lot to say about the employment insurance regime in general. That is understandable because this bill can only be understood and "appreciated," if that is the word, in the context of the history of employment insurance. This is only the latest chapter in a long, complex and involved story.



An attempt was made in the House of Commons to split the bill in such a way that the first part would have dealt with the corrections to be made to the 1996 reforms and the matter of the surplus, the role of the commissioner and of the Governor in Council, and so forth would have been considered separately. Whatever we do with the bill, if we want to do a real service to the people affected and to all Canadians, one of our committees should take up this challenge of studying the employment insurance system. I am the first to concede that it is a difficult, involved and sensitive matter.

Honourable senators, much depends on the timing. The former government swallowed the deficit in the UI Fund for a number of years. We felt — as has Paul Martin until recently acknowledged — that payroll taxes were the killers of jobs. Therefore, we swallowed the deficit for some years because of the high unemployment.

The Forget Commission did a comprehensive examination of this subject in 1986. There is a legend — and I cannot vouch for it directly but, knowing some of the players I think that it has the air of plausibility — wherein it is said that, when the recommendations were received, Prime Minister Mulroney asked someone to do some number crunching to determine the impact of the recommendations in his own constituency of Manicouagan because there was high unemployment there. When the results were in, it appeared that the immediate impact would be quite adverse. Thus ended the Forget report.

The watchword in government circles on these issues was expressed in the more or less bilingual pun, “forget Forget.”

A politician in the United States said that all politics is local. There is nothing wrong with that. People must be sensitive to the effects of these things on individuals, families and communities. This government was quite insensitive in 1996 with the reforms that it introduced.

Honourable senators, we must deal with this issue sooner or later. Much money is being spent to pursue objectives that are not being achieved by this fund. There are some built-in inequities, including the fact that, essentially, a payroll tax is being exacted from employers and employees under the guise of the employment insurance scheme that, as I say, is paying benefits to only 37 per cent of the unemployed people.

If we wish to do a real service, one of our committees should take this subject on. The issues raised as a general subject, are as profound and as important to the future as those health care issues that are now under study by the Standing Senate Committee on Social Affairs, Science and Technology.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker:** When shall this bill be read the third time?

On motion of Senator Cordy, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

## FEDERAL LAW-CIVIL LAW HARMONIZATION BILL

THIRD READING—MOTION IN AMENDMENT—  
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator De Bané, P.C., seconded by the Honourable Senator Poulin, for the third reading of Bill S-4, to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law.

And on the motion in amendment of the Honourable Senator Grafstein, seconded by the Honourable Senator Joyal, P.C., that the Bill be not now read a third time but that it be amended.

(a) on page 1, by deleting the preamble; and

(b) in the English version of the enacting clause, on page 2, by replacing line 1 with the following:

“Her Majesty, by and”.

**Hon. Serge Joyal:** Honourable senators, let us pretend, as Shakespeare wrote in his play *Julius Caesar*, that we are men and women of free minds. We are not simply persons of pre-determined partisan allegiance or veterans of past political struggles, but free men and women with minds open to receive and reflect upon proposals that may appear bold to some and iconoclastic to others.

At this point my concern with Bill S-4 focuses primarily on the second “whereas” of the preamble. This is where there is a bone of contention. The inclusion of the political concept of the unique character of Quebec society is wrong in a bill that deals exclusively with harmonization of our two legal systems — the common law and the Civil Code.

Let me submit four proposals to you. The first proposal is that any reference in law to the unique character of Quebec society runs contrary to the objective of Bill S-4, which seeks to strengthen our shared entity as one nation and as one country.

My second proposal is that this concept runs contrary to the very legal philosophy enshrined in the new Civil Code of Quebec.

Third, this clause runs contrary to what Quebec is today.

Fourth, it is a distortion of the resolution of 1995 and of the Calgary declaration of 1997.

Honourable senators, let us not be bound by the arguments of the past, by the old formulae that no longer resonate either here or in Quebec, and that have tended to alienate our fellow citizens in other parts of the country. By insisting that Quebec is a unique society, we are tying ourselves to ideas that may condemn any attempt in the future to achieve constitutional reform. To enshrine in Canadian statute law the concept that Quebec is a unique society is inconsistent with the very objective of Bill S-4. In the long-term, it may be a trap that will prevent meaningful attempts to achieve a lasting constitutional reform.

[Translation]

Let us therefore address the first proposal, namely that any reference to the unique character of Quebec society runs contrary to the very objectives of Bill S-4, which are to strengthen our common identity as a nation and a country.

Bill S-4, to harmonize federal law with the civil law of the Province of Quebec, is an initiative that involves the very way we perceive our country.

The objectives of the bill are fundamentally linked to the nature of the Canadian federation itself, in that one of the purposes of its original creation was to facilitate the coexistence of two linguistic communities and the development of two legal traditions, that is the codified civil law and the common law.

• (1610)

That reality is at the heart of our nationality. This bill therefore has a definite constitutional dimension to it. It translates, in actual fact, the obligation acknowledged by the federal Parliament to equally reflect in its legislation the concepts contained in each of the country's two legal traditions. In fact, Bill S-4 expresses the equality of status of the two legal traditions in the federal system and its legislative language.

In this sense, Bill S-4 is perfectly federative. It reconciles, brings together in harmonious cohabitation, two of the greatest legal traditions in the contemporary world. Neither one takes precedence over the other in federal legislation. The precise purpose of harmonization of the legislation is to faithfully respect the integrity of each of the two legal systems as well as each of the country's two official languages. It is, in fact, the role of the Canadian Parliament to ensure that each legal tradition develops in both of the country's official languages according to its own spirit.

This objective, I point out, is eminently federal. Only the Government of Canada and the Parliament of Canada can assume it in order to maintain the two legal traditions that have coexisted since the middle of the 18th century. This is clearly expressed in the substance of Bill S-4, with the exception of clauses 4 to 7, which contain a definition of marriage that is currently being

challenged before the civil law courts in Canada and before the common law courts in Ontario and British Columbia. In my opinion, this definition of marriage should not have been formally included in this bill until the higher courts of the land have dealt with it. Apart from this reservation I have just mentioned, the provisions of Bill S-4 are the first step in a remarkable effort to harmonize federal legislation.

If this undertaking is so praiseworthy and deserving of such support, why is its fundamental nature not expressed in the preamble to the bill? In other words, is the preamble in keeping with the federative principles of coexistence we should try to express as a national Parliament?

I submit, honourable senators, that the preamble fails to recognize the following.

First, that the two legal systems may now coexist in harmony in federal legislation, because, far from being separated or opposed, the two legal systems are based on the recognition of humanist values they now share in the Canadian whole.

Second, that the assertion the Civil Code testifies to the unique character of Quebec society expands and nurtures a socio-political concept justifying future claim to additional powers or special status.

Third, that by doing this, the Canadian Parliament lessens its constitutional responsibility to have the two legal traditions evolve and develop by keeping one within the borders of Quebec and the jurisdiction of the Quebec legislature.

Fourth, that this political concept of the unique character of Quebec society is an ambiguous concept. First, because it turns Canada into a country comprising various distinct societies and because it accentuates the territorial fragmentation of the country and promotes provincial patriotism.

Fifth, this concept also results, in Quebec, in a split that is based on one's language. It affirms the dominance of the French-language majority in Quebec's social structure. It emphasizes the "we" while stigmatizing "the others." This is a concept that is exclusive. It singles out the other minorities, namely anglophones, Aborigines and other cultural groups.

Sixth, this concept ends the cultural unity of what is called and has always been called the "French Canadians." It puts Quebec francophones in a unique society, while cutting Francophones living outside Quebec off from their common origin. This concept tends to split francophones in Canada into two and even three distinct societies: Quebecers, Acadians and those living in other parts of the country.

Seventh, this concept makes it more difficult to strengthen a shared Canadian identity and puts the emphasis on building Quebec society, while leaving it to others to develop the Canadian nationality.



Eighth, this concept eclipses the national responsibility of the Canadian government and Parliament toward the French language and culture in the country.

Ninth, this concept is pernicious, since it asks us to define another society and another citizenship, when the rights and freedoms promoted by Canada are philosophically universal and based on the most challenging ideal of respect of human values.

In fact, back in 1977, over 24 years ago, the Quebec Human Rights Commission pointed out the consequences of a societal split based on the language of the majority, when it said:

We believe that this confusion between belonging to a cultural group and a civil society is indefensible and, more importantly, eminently dangerous. It carries the seeds of a discriminatory attitude toward those who have the misfortune of not having been born in the cultural group that has proclaimed itself as the national group.

The question that we must answer is: When we, as lawmakers in the Canadian Parliament, want to promote the coexistence of two legal traditions in the country, what essential values must we try to affirm? That the country can reconcile two legal traditions in its national legislation or, rather, that it can formalize its splitting into multiple distinct societies with a unique character?

I maintain, honourable senators, that it is not appropriate for the federal legislator to consecrate the division of Canadian society for the first time in an enactment of the Parliament of Canada. Does this mean we cannot recognize the existence of the Civil Code of Quebec? Certainly not. How did a past legislator recognize the existence of Quebec's legal system? The obligatory reference to this issue can be found in the very provisions of sections 92(13), 94 and 98 of the Constitution Act, 1867.

Section 98 on the selection of judges expresses very clearly how the legal reality which exists in my province is to be recognized. And I quote section 98:

The Judges of the Courts of Quebec shall be selected from the Bar of that Province.

Period. There is no mention of special status, unique character or distinct society. This is the neutral, constitutional way of recognizing Quebec's authority to maintain its traditions of codified civil law and a competent judiciary to interpret it. There is no socio-political qualification of distinct society or unique character in any of these provisions of the 1867 Constitution. Yet Quebec has maintained and adapted its civil law tradition for 136 years.

• (1620)

Why would we now introduce a political concept that has divided the country for 20 years in the very bill which, for the

first time, harmonizes both systems in a common Canadian legislation?

Why argue for and against? Must we cut off Quebec within the borders of a distinct or unique society because we recognize the equality of two legal traditions, in both languages, in Canadian legislation?

Many of the arguments that have been advanced in support of this reference in the preamble are to the effect that the Civil Code is so different from the common law that it alone would justify Quebec's unique social identity.

I submit to you, honourable senators, that this is a superficial historical reading of the current legal reality in Quebec.

I now turn to the second proposal: the reference to the unique character of Quebec society in Canada runs counter to the legal philosophy enshrined in the Civil Code and the legal system of Quebec.

Before the reform, completed in 1994, the Civil Code of Quebec was the expression of a fundamentally inegalitarian society in which the man ruled the family and told his wife what to do, and in which land values structured the economy. Those are just a few examples.

[English]

**The Hon. the Speaker:** Senator Joyal, I am sorry to interrupt but your time has expired. Are you requesting leave to continue?

**Senator Joyal:** Yes.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

[Translation]

**Senator Joyal:** Those were the characteristic elements of the "society" of the time, inherited from another era.

However, the Civil Code of Lower Canada, adopted in 1865 did not even then contain anything more than the old prescriptions of the French legal tradition; the Civil Code of 1865 codified as well the practices of common law as far as bills of exchange, instruments and property rights were concerned, replacing the old seigniorial regime in Quebec. In fact, common law in Quebec also governed insolvency, commercial practice and criminal law. It is incorrect to imply that the Civil Code was exclusively a translation of the French legal tradition. Even back then, certain significant borrowings from the common law had been codified.

This was also recognized by lawyer Louise Vadnais in an article in yesterday's *Le Devoir*, in which she wrote:



If Canadian law — both private and public components thereof — is essentially a system of common law, Quebec law is a mixed system. It takes its sources from two systems: the civil law, rooted in French law, which governs relationships between individuals, also called private law, and the common law, born in England, which governs the functioning of the State, its relationships with its citizens or with other states, which are areas falling under public law.

As for the new code, adopted in 1991 and taking effect in 1994, it brought the two legal systems together far more than it accentuated their differences. For example, among the additions to the new code were the concept of chattel mortgages and the recognition of true trusts, both borrowings from the common law.

The government expert witnesses who appeared before the Standing Committee on Legal and Constitutional Affairs provided good explanations of the convergence, to use their term, which now characterizes the two legal traditions.

According to Dean Claude Fabien of the Université de Montréal:

Fundamentally, Quebec's civil law must recognize what it owes to common law and to its influence.

Dean Louis Perret of the University of Ottawa added:

It has been influenced by a variety of sources, including common law, which has been incorporated into and adjusted within the Civil Code...

...from international organizations. For example, the Vienna Convention...

Professor Nicolas Kasirer of McGill University contended, and I quote:

However, in the modernization of civil law and the convergence of the values that are more or less markedly present ... one can find these same values throughout western law, be it common law, civil law or whatever else.

It was left to Professor Jean Pineau of the University of Montreal to conclude, in an article that appeared in 1992 in the *Canadian Bar Review*, when the new code was being adopted, that profound values underlay the convergence of the systems of civil and common law, and I quote:

This code means consolidation and improvement. It is being consolidated by bringing provisions into line with the Charter of Human Rights and Freedoms ... New values concerning respect for the individual, the primacy of the individual and a better balance between individuals.

We see, therefore, that as the two systems come to share common values, practices and fundamental principles based on the primacy of individuals, equality of relationships, the obligation to recognize the rights and freedoms of the Charter, values that protect all Canadians and singularly Quebecers, introduced into the preamble is the socio-political concept, the unique character of Quebec society, which runs counter to the objective of the new code: to rid itself of concepts of inegalitarian relationships, of an outdated view of authoritarianism but to incorporate concepts of equality and freedom, modern, practical notions, conveyed by what Mr. Justice Antonio Lamer called the culture of rights.

Honourable senators, in my opinion, it is truly to take a step backwards to try to muddle things up by bringing back the concept that Quebec is legally separate from Canada, that its values of legal philosophy are different from those of common law and that it therefore constitutes a distinct entity.

This is what the Right Honourable Pierre Elliott Trudeau recognized in a different way in an article published in the magazine *L'Actualité*, in October 1992:

...We make a big deal, for example, of the fact that Quebec uses the civil law, while the other provinces use the common law. But no matter how important our civil code may be, it has a very minimal impact on Quebec's provincial legislation. Just like all the other provinces, Quebec has passed a huge number of statutory laws, which apply to all facets of our life in society and which are based on a culture that has much more to do with the culture of the other provinces than with the culture under French Rule and the First Empire.

Honourable senators, I do not contend that the Civil Code does not exist in its own right. I do contend, in a broader sense, that both systems share liberal values that are the foundations of Canadian society and that unite us all as Canadians.

This is why I am submitting my third proposal: the mention of Quebec's unique character does not reflect the identity of modern Quebec.

Because words do mean something. Some have contended here that this mention of "the unique character of Quebec society" is neutral, that it reflects the context and the facts, that it is in fact of no consequence and that it has no legal effect. Why then is it so important to include it?

[English]

A former prime minister said, "If it must be there, what does it mean? If it means nothing, why have it at all?"

[Translation]

Some believe that the use of words or political concepts is of no consequence and that we can, regardless of the notion of clarity, use the terms "society," "people" or "nation" interchangeably.

In my opinion, it is wrong to make such a claim in the Canadian political context. The terms "society," "people" and "nation" are all used as a justification for demanding greater powers. Let us take a look at them.

• (1630)

The concept of "distinct society" was coined in February 1965 by André Laurendeau of the Commission on Bilingualism and Biculturalism as a justification for recognizing the special status of Quebec, and since then it has been invoked to interpret the Constitution in such a way as to limit the application of the Charter and claim greater powers in such areas as social and cultural affairs.

As for the word "people," it serves to justify Quebec's supposed right to self-determination; which the Supreme Court obviously refused to recognize in August 1998. As for the term "nation," it serves to justify what any so-called normal nation is trying to do, according to Premier Landry, which is:

...to manage its own affairs and not allow itself to be governed by another nation.

Prime Minister Trudeau had it all figured out when he wrote in 1964:

...when a strongly united minority in a state begins to define itself forcefully and relentlessly as a nation, it unleashes a mechanism which tends to lead it to sovereignty.

That was in 1964, honourable senators.

More recently, on March 15, journalist Lysiane Gagnon wrote the following in her column in *La Presse*:

The same goes for the concept of "Quebec nation," which the PLQ has decided to adopt, even if it puts it on a collision course with the PQ. It will not win at this game, because the whole sovereignist argument is based on the idea that Quebecers form a nation and that the logical and natural destiny of nations is to evolve towards independence.

The concept of "Quebec nation," far from being obvious, is a recent invention, which allows sovereignists to modernize the ideological base of their movement (which was initially based on the existence of a French-Canadian

nation), to resolve the issue of borders conceptually, and to eliminate the existence of French-speaking minorities outside Quebec, while annexing minorities within Quebec who, although they are attached to Quebec, do not consider themselves members of a "Quebec nation." And with good reason, because in everyday English, the word "nation" has only one meaning: that of state or country.

Anyone following the political debate in Quebec, honourable senators, knows very well that the concepts of distinct society or unique character do not correspond to where today's political leaders in Quebec have raised the bar. What is more, today's young generation of Quebecers is more self-assured, more educated, more in touch with the whole world, more in tune with cultural diversity and not in need of being kept within distinct or unique borders. These are the Quebecers who are opening up the future.

That is the reason behind my fourth proposal. This reference to the unique character of Quebec society is a distortion of the resolution of 1995 and of the Calgary declaration of 1997.

The vocabulary of politics is fraught with consequences and it cannot be used without thought to its consequences. We, as legislators, cannot ignore this in the debate on such a bill.

Much reference has been made to the fact that both Houses passed a resolution in December 1995 recognizing "the distinct character of Quebec society," and that the Calgary declaration in turn recognized "the unique character of Quebec society." The text of the preamble does nothing more than to build on these two texts.

I would submit first that it is intellectual laziness to treat the two terms as one in each of these texts.

Second, if the words have a meaning in a text of law, the term "distinct" is not the equivalent of "unique." The Montreal Gazette editorial of last March 13 clearly acknowledged this by stating "Words do have meanings."

Third, distinct means "different", whereas unique means, according to the dictionary, "one of a kind, infinitely above the others, incomparable, exceptional."

Claiming that it is a matter of "Six of one, half a dozen of the other" is tantamount to ignoring the fact that on two occasions, one of them a referendum, Canadians have refused to support a constitutional amendment implementing the first proposal, and the provincial governments acted accordingly. That is why the concept was omitted from the Calgary declaration. It simply would not fly, and the behind-the-scenes history of the Calgary declaration confirms it.



Fifth, the Calgary declaration itself represents the agreement of nine provincial premiers and two territorial leaders, entered into in September 1997. Eight of these premiers are no longer there. It was not submitted in a referendum to all Canadians, and rightly so, because Canadians do not want to see their political leaders committed to a constitutional reform with no way out.

Sixth, the Calgary declaration is a whole. We cannot take out some of its parts and not recognize, for example, Aboriginal peoples and the multicultural heritage of Canadian society.

Seventh, the idea that was recently revived and that suggests including an interpretative clause in the Canadian Constitution to the effect that the Canadian Charter of Rights and Freedoms, among other documents, be interpreted based on the "unique character of Quebec society" is a proposal which, in my opinion, undermines the credibility of the charter by suggesting that, for the past 20 years, it has been interpreted in a manner that goes against the rights and freedoms of Quebecers or, more generally, the interests of Quebec.

Eighth, in fact, the rulings of the Supreme Court and of the other courts, whether on the language of advertising, educational rights or the Referendum Act, for example, have always been largely accepted by Quebecers, who saw them as balanced checks of nationalistic views that have more to do with fuelling resentment toward anglophones than ensuring a balanced use of the power enjoyed by the majority.

In a country like ours, with its increasing diversity, it would be ill-advised for us lawmakers, who are responsible for strengthening the principles, values and common aspirations of Canadians, to weaken the moral authority of the Canadian Charter of Rights and Freedoms, which is the foundation of the rights and freedoms that unite us, regardless of any difference based on our origin, sex, colour, religion or race.

To defend the need for a clause that would weaken the common Canadian heritage and formalize Quebec's withdrawal from that common heritage, or to contend, as some witnesses did, that the mention of the unique character of Quebec society in the preamble of Bill S-4 is "neutral" or "states the obvious" has no legal basis. It would be the first time that a bill designed specifically to strengthen the notion of federation included wording that would result in Quebec's socio-political exclusion from the Canadian society, which is one, which is real and which is based on the sharing of rights and freedoms.

It is a huge contradiction to amend federal legislation to take into account Quebec's civil law tradition, while at the same time formalizing the province's socio-political split. Once this wording becomes law, will this precedent be used to suggest that a similar amendment to the Canadian constitution would guarantee the success of some future constitutional talks?

I contend, honourable senators, that to try to open the way to constitutional reform by reviving a concept that symbolizes past failures condemns the undertaking to the same fate. This is why the amendment I put to you today is intended to commit us to new bases.

#### MOTION IN AMENDMENT

**Hon. Serge Joyal:** Honourable senators, I move, seconded by the Honourable Senator Moore:

That Bill S-4 be not now read a third time but that it be amended in the preamble, on page 1, by replacing lines 5 to 7 with the following:

"Province of Quebec finds its principal expression in the *Civil Code of Quebec*;"

**The Hon. the Speaker pro tempore:** Is it your pleasure, honourable senators, to adopt this motion in amendment?

**Some Hon. Senators:** No.

• (1640)

**The Hon. the Speaker pro tempore:** Are honourable senators ready for the question?

**Some Hon. Senators:** No.

**The Hon. the Speaker pro tempore:** Is this a debate on the amendments?

**Hon. Marcel Prud'homme:** Honourable senators, I am not at my seat and I did not ask to speak. I simply point out to honourable senators that there should be a debate on this. We are not ready for the question.

**Hon. Pierre Claude Nolin:** Honourable senators, we have before us a motion to have all decisions respecting Bill S-4 taken Thursday afternoon at about 3:30 p.m. as well as two motions in amendment and a main motion.

That was the purpose of my questions to Senator Robichaud. I want to take part in the debate on Senator Grafstein's amendment and on Senator Joyal's, as well. Things most certainly cannot be left as they are. I understand that we have a lot of powers, but we cannot rewrite the history of Canada. If there is a debate, I propose we adjourn it and continue it tomorrow.

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, this afternoon's motion indicated that all questions were to be settled by Thursday afternoon at 3:15 p.m. at the latest.



The response to Senator Nolin's question as to whether a senator could speak to both the amendments and the main question is yes. At the risk of repeating myself, I believe there is still enough time to let honourable senators who wish to do so take part in this debate.

If no one wants to speak to the amendment we have before us at the present time, the question can be put, but everything must be settled by Thursday at 3:15 p.m. at the latest.

**Senator Nolin:** I move that the debate be adjourned.

[English]

**Hon. Jeremiah S. Grafstein:** Honourable senators, I intended to speak on this amendment. I have spoken already on my amendment. As I understand the rules, each senator is entitled to speak once on each amendment. If Senator Nolin adjourns the debate, then I intend to speak on this amendment.

[Translation]

**Senator Prud'homme:** Honourable senators, when Senator Robichaud proposed this afternoon's motion, my understanding was that there would be a final vote on Thursday, but that in the meantime an honourable senator could speak to the motion in amendment or on future motions in amendment, which is precisely the case at this time with Senator Joyal's motion in amendment.

It was my understanding that it was not a matter of voting on each amendment as they came up, but rather that on Thursday we would be voting on all of the amendments, and on the amendments. As an exception the debate should be exclusively limited to the last amendment by Senator Joyal, in keeping with the Rules. Now we ought to all focus on the "Joyal amendment" until another senator rises with a sub-amendment.

We have agreed to tie this all up on Thursday, but in the meantime, any senator may express his or her views on the main motion or any amendment, even on future amendments. That is what I believe to be the case. Have I understood correctly?

**The Hon. the Speaker *pro tempore*:** Honourable senators, that is exactly what is said in Senator Robichaud's motion, which is that by 3:15 p.m. on Thursday, this debate would be over. I now accept the adjournment motion by Senator Nolin.

[English]

**Hon. Anne C. Cools:** Honourable senators, perhaps we can have some clarification. I was under the impression that the motion earlier today essentially said that the Senate had agreed to complete everything on this bill Thursday afternoon by whatever time was indicated. The Senate however has not agreed that it would vote on everything en masse at that time. If that was in the motion, then it would be good and useful to get some clarification. Was Senator Robichaud's motion that we would vote en masse, together?

**Senator Nolin:** Not en masse.

**Senator Cools:** Or everything would be completed?

[Translation]

**Senator Robichaud:** Honourable senators, I simply propose a motion to the effect that we wanted to dispose of all matter relating to the amendments, sub-amendments or the main question with respect to Bill S-4 before 3:15 p.m. on Thursday of this week.

I said we were open to debate, but that if no one rose to continue the debate, the debate would have to stand or the question put. I would have no objection to anyone proposing an amendment or speaking to the amendments.

We must get on with the business of the house. Either we continue the debate or we adjourn it.

[English]

**Senator Cools:** Then we are free to vote right now, if Senator Joyal wishes a vote on his amendment.

**Senator Nolin:** Maybe my honourable friend is free to vote but I am not. I wish to adjourn the debate.

On motion of Senator Nolin, debate adjourned.

## PATENT ACT

### BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

**Hon. Jack Wiebe** moved the third reading of Bill S-17, to amend the Patent Act.

He said: Honourable senators, I am pleased to rise again today to undertake the third reading of Bill S-17. As you know, the purpose of Bill S-17 is to bring Canada's Patent Act into compliance with our international obligations. Bill S-17 will not in any way undermine the balance of our patent regime but will send a strong signal that we take our international obligations seriously. It is gratifying for me as the sponsor of this bill to know that honourable colleagues on both sides of the chamber have expressed their support for the purpose and scope of Bill S-17, and I trust that all honourable senators will join me in adopting it.

**Hon. Jeremiah S. Grafstein:** Honourable senators, I was not able to review all of the testimony before the committee on the bill. However, the rationale for this bill, as I understand it, is that we are trying to bring the Patent Act legislation into conformity with our international trade obligations. Have European countries or has the United States, for example, adopted parallel legislation so that our patent legislation is consistent with theirs in terms of the length of the patents?

• (1650)

**Senator Wiebe:** Honourable senators, that question would be more properly directed to the minister. However, it is my understanding we are in compliance with the World Trade Organization in respect of the patent legislation, as are the United States and the other countries that belong to the World Trade Organization. Our patent legislation is not any less effective than that of the other countries of the World Trade Organization.

**Senator Grafstein:** Did the minister undertake to examine the cost structure of patents in Canada at an early date? I understood from the chairman of the committee that this is a minor piece of legislation to achieve conformity. However, the question of the cost of drugs that arises from the patent legislation was not really examined. Has the minister undertaken or will the minister undertake shortly to bring forward legislation so that senators may have the opportunity to explore the infrastructure cost of drugs? Everyone knows that those costs are rising rapidly.

**Senator Wiebe:** Honourable senators, a number of concerns were raised in respect of the entire patent legislation. My honourable friend will understand our restricted area in terms of Bill S-17. However, the minister in charge provided assurance to the committee that, before this fall, he would look seriously at some of the suggestions raised, not only by the committee, but by other members of the public as well.

On motion of Senator Tkachuk, debate adjourned.

## FINANCIAL CONSUMER AGENCY OF CANADA BILL

### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Rompkey, P.C., for the second reading of Bill C-8, to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions.

**Hon. David Tkachuk:** Honourable senators, Bill C-8 is a bill to establish the Financial Consumer Agency of Canada and to amend certain acts in relation to certain financial institutions. It is an innocuous name for a 1,000-page act in both official languages. However, its name greatly understates the importance of the bill.

Bill C-8 affects the economic health of everyone: domestic loans, mortgages, leases, casualty insurance, life insurance, investments and pensions. It affects the very operation of commerce in this country.

The bill has a heart and soul. Even though we may not think that banks and other such financial institutions have hearts, hundreds of thousands of people work for these organizations. Those people have children, families, savings and investments; they buy cars, homes and toys for their children. If we remove the individual business interests of the banks, the insurance companies, the brokers, the casualty insurance companies and the car lessors, it all boils down to what is important for all of us — the public interest. It is important to all Canadians and to the very lifeblood of the country.

Honourable senators, I urge those of you with an interest in economic issues to take the time to read and study portions of Bill C-8 that may affect you or that you may be interested in because it will affect all of us.

The process that led to this legislation really began in 1992 when the federal government under then Prime Minister Mulroney released a new legislative framework for federally regulated financial institutions that included banks, trust companies, insurance companies and national organizations of the credit union movement. New powers were introduced, changes were made to ownership regimes and safeguards were put in place.

On December 18, 1996, the Minister of Finance announced the mandate and composition of the Task Force on the Future of the Canadian Financial Services Sector. The task force was to advise the government on what needed to be done in the competitive Canadian financial system. The task force was ably headed by Mr. Harold MacKay, who, by the way, is a current frontrunner in the Saskatchewan Senate sweepstakes, as is Mr. Bernie Collins.

The task force released its report in September of 1998, making 124 recommendations on four major themes: enhancing competition and competitiveness, improving the regulatory framework, meeting Canada's expectations, and empowering consumers.

Two parliamentary committees were also created: the House of Commons Standing Committee on Finance and the Standing Senate Committee on Banking, Trade and Commerce. As well, the Liberal Caucus Task Force was established, which was comprised of 50 Liberal MPs, to study the report. The task force focused on bank mergers, and the result was 89 recommendations. Many of the recommendations were upheld by different committees. Many had different opinions, and there were numerous divisions.

The Minister of Finance then tabled a federal government white paper in June 1999 entitled "Reforming Canada's Financial Services Sector: A Framework for the Future." The white paper was tabled seven years after the original reforms were brought about. It outlined the current government's vision for the future of the financial services sector.



Honourable senators, it is important to provide both Canadian business and consumers the tools that they require to compete in an ever-changing dynamic financial services landscape. This is not an easy task amidst competitive interests, changes in technology — which affect all of us — lower barriers to international business and trade, and, of course, changing world politics. Progress in this regard has taken many years and extensive consultations. It is a challenge to make changes now, the impacts of which may only be visible in the future.

At the same time, it is important to make changes that are not just for today but for the future as well. I believe that the committee will focus on that.

Bill C-8 is meant to provide an overhaul of the financial services sector, but I somehow feel that it is more a collection of many items that were thrown into this omnibus bill. That seems to be a characteristic action by the government opposite. I am not concerned about this.

As the committee studies the changes affecting the landscape, I am certain that it will bring a measure of consistency and cohesiveness to the matter that will benefit Canadian consumers first and foremost.

The Canadian Payments System, which is opening up, has long been advocated by the Standing Senate Committee on Banking, Trade and Commerce. The MacKay task force recommended that the payments system be opened up to life insurance companies, security dealers and others to create competition and greater access for all.

• (1700)

It is important. Opening up access will achieve greater competition, which I see as providing a greater end result for Canadian consumers.

The ownership regime establishes a new set of ownership rules that should help increase the viability of financial institutions. This is a big change in our marketplace. We have always been very safety oriented in our banking system. We are introducing an element of risk into the banking system.

A small bank with equity under \$1 billion would have no ownership restriction. It would require only \$5 million in equity to open a bank in Canada. An individual could own a bank.

Honourable senators, this, of course, increases risk. However, at the same time, we must run this risk if we are to allow competition and allow our small communities all across Canada to have financial institutions to replace the large institutions. Once this bill is passed, large institutions will merge, and they will close banks across the country.

The ownership régime for large banks has been raised to 20 per cent of any class of voting shares from 10 per cent. At

one time our Banking Committee was in favour of this, but now some members of our committee will reflect on this as well. I proceed with our study of this bill. Effectively, 20 per cent ownership amounts to control. A Pittsburgh bank could control the Toronto Dominion Bank if it bought 20 per cent of that bank's voting shares. In a public company, 20 per cent ownership effectively gives control. I know a number of senators who will be concerned about this matter. I am one of them.

The Financial Consumer Agency of Canada would be a new agency set up to establish and coordinate consumer protection measures through one agency. I have heard of this type of agency before as have many of my colleagues. It will be interesting to see whether this agency will be a watchdog on financial institutions, as well as ensuring that they comply with federal regulations, or whether it will be a bureaucratic watchdog that neither watches nor dogs the financial services industry on behalf of the consuming public.

Honourable senators, this bill also proposes that an ombudsman be appointed, which ombudsman will be paid by the taxpayers of Canada. Presently, the banks pay the ombudsman. The government believed that people did not have faith in an ombudsman who is remunerated by the banks. He who pays the piper calls the tune. An ombudsman is to be appointed by the government, even though senators were of the opinion that the ombudsman, as he or she is currently selected, was doing a good job. We recommended that they continue the current practice, but the government has taken a different position and proposes to appoint a Canadian financial services ombudsman.

As was stated in the other place, it is important to understand how increasingly competitive the financial services sector has become over the last 10 years. Changes over the last 10 years are far greater than those that took place during the previous 150 years.

Yet, in the face of this dynamic and ever-changing sector, the government has dragged its feet on necessary reforms and updates. It seems like forever, but it is only eight years ago that the task force was established in 1996. In 2001, we are only now dealing with the legislation. Even though many people tell us that they are unhappy with the bill, they believe it should be passed because it will be the only measure they will have. We must consider this carefully as we go forward.

Bill C-38, the bill prior to the election, differed from Bill C-8 regarding the merger review process. The merger guidelines now include approval by the Senate Banking Committee. This is testament to the good works of our chairman. We all felt that it was important that Parliament be involved in the merger process. Honourable senators, I must congratulate Senator Kolber who lobbied hard to have this clause included in Bill C-8.

**Some Hon. Senators:** Hear, hear!



**Senator Tkachuk:** That is the nicest remark I have made to a Liberal in weeks, perhaps years.

Co-ops and credit unions still have obstacles to growth in Canada. Bill C-8 does address some concerns of credit unions regarding irregularities. I have met with a number of members of co-ops and I recognize their need to grow and their wish to be included in the legislation. However, co-ops are governed by different rules from those that govern banks. They are subject to provincial regulation. The nature of membership in a co-op prohibits members from residing outside of the province of business of the co-op. Yet it is apparent that they could benefit from membership in a national organization of sorts. It would be preferable if co-ops could offer services outside their home province and thereby benefit from economies of scales by centralizing some operations and avoiding duplication.

I do not think that Bill C-8 adequately responds to the concerns of the co-ops. I know that co-ops have been petitioning ministers for at least 20 years in this direction, but surely omnibus legislation such as Bill C-8 would be the right vehicle to address these concerns and issues.

Bank assurance is an issue that we have all grappled with and debated at length. The banks, of course, want to provide leasing services for automobiles. They also want to sell property and casualty insurance from their branches.

Currently, banks in Quebec may sell property and casualty insurance, but it has affected the brokerage business quite dramatically. In the rest of Canada, credit unions, which are large banking institutions, may sell such insurance. This practice, however, has not had a great effect in Saskatchewan because credit unions there are not as large a factor in the economy, so they do not affect the brokerage community as much as it would if all the banks were allowed to sell insurance. This is a politically contested area, and I recognize that we will not have unanimity on one side or the other. This will cross party lines.

I am in favour of what the government has done. I think we should leave that alone. I am speaking for myself because I know that some senators on my side disagree with that. They would like to see leases being offered by banks in competition with the automobile and small companies that offer leases. They also support the selling of insurance through bank branches. The banks already have insurance companies that can sell insurance like any insurance company.

Insurance is one of the most competitive financial industries in this country. Hundreds of insurance companies offer property and casualty insurance. How many banks do we have? We have six, and a few credit unions. Yet, the banks say that they must be allowed to sell insurance. I know why they want to do this. A little bit of the populist comes out in me here. The banks know that when I come to them for a mortgage, if they are allowed to sell insurance, they will offer me coverage. They might also tell me that if I draw my insurance from them I will get a break on

my interest rate. That is exactly what they do. They cross-sell, of course. Barriers and walls cannot be put up against that. Otherwise, why would they care if that insurance broker was selling it out of that bank outlet or not? They could have an office next door and sell insurance; but, no, they want to sell it in the branch. We all know why they want to do that.

• (1710)

The banks will say, as they have before, "Gee whiz, all your leasing is done by all those big American automobile companies. I cannot understand what kind of Canadian senators you are when you will not offer Canadian banks the opportunity to sell leases in competition with the American automobile companies." What they do not say is that as soon as this legislation passes they will be selling their 20 per cent to Americans as fast as they can. In that way, they can make their millions in options and increased asset value. The only reason bank shares have not gone down as much as other companies in the last while is because the marketplace knows this legislation is coming through. The Chase Manhattan and all the rest of them are waiting in the wings to grab up a piece of our banks.

These banks are only Canadian and nationalist until the dollar is put in front of them. They are in business. I do not blame them. I do not think they are bad for doing this. They must argue for what they want and for the benefit of their shareholders. However, in the end, they will all make deals with American banks and they will become multinational banks. They will no longer be only Canadian institutions. They will be world institutions which, frankly, is what we want them to be. If we in Canada have a good piece of that action, then it is good for us and good for the shareholders. Do not let them try to use nationalist arguments on you, honourable senators, as to why they should have the right to lease automobiles.

I will end by commenting on something that seems rampant in the bill. I refer to ministerial discretion. Ministerial discretion is mentioned all through this bill. It is definitely extending the concept of the king to the hands of the Minister of Finance, in this case Paul Martin. What appears, over and over again, is that the minister ultimately approves or disapproves of mergers. He can decide on who should sit on the board of the Interac Association. He can decide whether or not a viable business merger will take place. He can decide who of Canada's millionaires can establish a new bank. Independent of all organizations that are set up to protect and monitor Canada's service sector, this minister can decide the future direction of Canadian business.

That is too much power. It is certainly a topic about which we will probably have some interesting discussions when Minister Martin appears before the committee. We know this is an important bill because we will actually have the Minister of Finance in front of us and not his parliamentary secretary, who usually appears before us on all other bills. We know he is very interested in this bill and he wants it passed by the end of June.

In all of these discussions about banks, insurance companies, leasing and brokers, the question that we should all ask, and will ask in committee, is: Does the bill serve the public interest? That should be our concern.

Honourable senators, when the banks phone you, which they will surely be doing since this bill is still before the House of Commons, tell them to take a walk. What we are interested in is whether this bill serves the public interest, the people of Canada — not the banks, not the insurance companies, not the co-ops, not the credit unions, but the public interest. Does it serve our children, our neighbours and our friends?

I am not interested in forcing banks to do good works. I am not interested in community relationships and to whom they have given money. What the government should be doing is creating an environment in which citizens can prosper so that good works by others become less necessary. That should be our goal and our intent.

This is an opportunity to follow up on the MacKay Task Force Report on the Future of the Canadian Financial Services and subsequent studies which present a fragmented vision of Canada's financial services sector. Hopefully, it will provide a unified and future plan for Canada's financial services sector.

In a few places the bill is interesting. In the face of foreign competition, it offers a landscape of international mergers and acquisitions. It offers a hesitant and tentative step toward the future. If you review it, honourable senators, you will see that there is no clear vision in it. That is why the financial institutions are somewhat unhappy about it. However, they want it because that is all they will have.

We must attend to our duty to serve the public interest and to ensure that Bill C-8 is a bill of which we can all be proud when we are done with it, whether that is in early May or early June.

**Hon. Donald H. Oliver:** Honourable senators, I, too, would like to join this important debate on Bill C-8. This bill is a massive piece of legislation, as my learned colleague Senator Tkachuk has just told you. It contains a number of measures that have the potential to reshape the financial services sector in ways that could benefit consumers and create opportunities for Canadian financial institutions to succeed in the Canadian and global financial area.

Today, however, I would like to touch briefly on only four policy areas. These are areas that I hope the Banking Committee, when it gets the bill, will focus on and discuss because they are areas in which I think there are concerns. The four areas are: the widely held rule that was discussed by Senator Tkachuk, insurance retailing, the prohibition on the merger of big banks and insurance companies, and the regulations to be made under the new act.

The so-called widely held rule has been a cornerstone of Canadian banking legislation. Schedule I banks have had wide ownership since 1967 when the 10-25 rule was introduced to prevent the takeover of a Canadian bank by a U.S. financial institution. Under this rule, a single shareholder could own up to 10 per cent of a bank's shares, and total foreign ownership could not exceed 25, hence 10-25.

As honourable senators are aware, the 25 per cent restriction on foreign ownership was removed to meet our obligations under the Free Trade Agreement with the United States and with the WTO. However, the 10 per cent limitation on single shareholdings remains.

The widely held rule has important policy objectives. It fosters Canadian ownership, facilitates the maintenance of Canadian-based financial institutions and ensures the separation of financial and commercial activity.

In its 1998 report, the Task Force on the Future of the Canadian Financial Services Sector, the MacKay task force recommended a continuation of the 10 per cent rule for financial institutions with shareholder equity in excess of \$5 billion. The task force would have applied this rule to all large federally regulated financial institutions, not just banks.

• (1720)

However, the task force also recognized the need to introduce a measure of flexibility into the 10 per cent rule. It, therefore, proposed that the Minister of Finance would have authority to authorize single shareholdings of up to 20 per cent of any class of shares, as long as all shareholders holding more than 10 per cent of the shares did not collectively own more than 45 per cent of the equity.

The task force saw this 20 per cent limit as a way to accommodate strategic transactions that would be constrained by the present 10 per cent rule, and it could facilitate acquisitions by Canadian financial institutions where shares are used as an acquisition currency and enhance corporate governance.

When the Standing Senate Committee on Banking, Trade and Commerce reviewed the MacKay task force recommendations, however, it took a different approach to the widely held rule. The committee agreed that the largest financial institutions should be widely held, but it went on to recommend that no individual group should control more than 20 per cent of the voting share and own more than 30 per cent of the equity of a financial institution. Among other things, the Banking Committee felt that a general 20 per cent limit as opposed to a 10 per cent limit on share ownership would provide added flexibility for mergers and acquisitions, allow for closer monitoring of management and eliminate excessive use of ministerial discretion. Furthermore, a 30 per cent limit on equity would allow non-voting shares to be used if a merger or acquisition required more than 20 per cent to be completed.



Bill C-8 reflects much of the Senate Banking Committee's position. A single shareholder under the bill would be able to own up to 20 per cent of a widely held bank's voting shares and 30 per cent of any class of non-voting shares. Acquisitions of bank shares above the present 10 per cent limit would be subject to approval by the Minister of Finance based on a "fit and proper" test that focuses on the character and integrity of the applicant.

During a transition period ending December 31, 2001, the 20-30 ownership rule would also apply to demutualized life insurance companies with equity exceeding \$5 billion.

Honourable senators, I agree that it is important for the ownership regime to have a measure of flexibility. However, I am concerned that the proposed new regime may not strike the right balance between flexibility and the need to preserve Canadian ownership of our largest financial institutions. The new regime would allow a bank to be owned by, say, five shareholders, all of whom could be situated outside of Canada.

The MacKay task force received very few submissions supporting the removal of the 10 per cent rule and, after an in-depth analysis, recommended its preservation. However, it also recognized that in today's globally competitive financial markets, it was necessary to develop an ownership framework that gives Canadian financial institutions the ability to restructure and form strategic alliances without compromising the two critical aspects of the present system — Canadian control, and safety and soundness. This is why the task force chose to retain the 10 per cent ownership rule for passive investors, but allowed the Minister of Finance to approve shareholdings of up to 20 per cent as long as the shareholders who owned more than 10 per cent did not collectively own more than 45 per cent of the shares.

The MacKay task force also noted that "there is no authoritative or precise calculation" of the ownership level that would best balance the improvements in corporate governance that can come through allowing shareholders to have a bigger stake in a bank and the risk associated with the possibility that a shareholder could exercise de facto control over an institution and compromise the interests of depositors. The task force felt that the 20-45 rule would strike the right balance between enhancing governance and ensuring that control would not rest with a small group of shareholders.

Second, I will refer to insurance retailing. Whether banks should be able to sell insurance in their branches has been hotly debated, as Senator Tkachuk has just said. This has been so for a number of years. At present, banks can sell a specified range of insurance products through their branches, such as credit card insurance, creditor life insurance, mortgage insurance and travel insurance. Many of these products are distributed under networking agreements between a bank and insurance companies that are unaffiliated with the bank. Furthermore, the Bank Act allows banks to own insurance companies that can sell any type

of insurance using other distribution channels. Banks and their subsidiary insurance companies, however, cannot share customer information or target-market insurance to their customers. This restriction essentially prohibits banks from mining their customer data to promote the sale of insurance products.

After spending a considerable amount of time examining the insurance retailing question, the task force recommended that federally regulated deposit-taking institutions be allowed to sell insurance through their branches, once appropriate tied selling and privacy protection regimes were in place.

The House of Commons Finance Committee did not support the task force recommendations in this regard, and the Senate Banking Committee recommended that deposit-taking institutions should continue to be prohibited from selling property and casualty insurance in their branches. However, the Senate Banking Committee said that these institutions should be able to sell life annuities to their RRSP customers immediately and retail other life insurance products after a transition period. That was the compromise that the Banking Committee came to.

Bill C-8 stays the course on insurance retailing. Banks will continue to be prohibited from selling insurance in their branches and from using customer information to market insurance.

I believe this decision is ill-founded, honourable senators, and I hope that the Senate Banking Committee will recanvass it. The facts simply do not support the position.

First, polls show that Canadian consumers want more choice as to where they can buy insurance.

Second, there is a worldwide trend towards closer ties between banking and insurance, and in many jurisdictions banks are able to sell insurance through their branches.

Third, international experience suggests that banks and insurance companies can successfully compete against each other and, as markets continue to converge, that these institutions will be competing head to head across a wide range of financial services.

Fourth, large Canadian insurance companies are actively involved in supplying insurance products that are distributed through banks in the United States. It, therefore, seems rather contradictory for insurance companies to continue to oppose the sale of insurance products in bank branches in Canada.

Fifth, in Quebec, as Senator Tkachuk pointed out, where insurance can be sold through the caisses populaires, insurance agents, companies and brokers continue to be significant market competitors.

Sixth, the task force found no evidence of predatory or loss-leader pricing when deposit-taking institutions entered the insurance market.



Seventh, more competition will allow insurance products to be available to lower income Canadians, thereby giving underinsured groups wider access to insurance products.

Finally, the current restrictions are anti-competitive and create artificial market barriers.

Honourable senators, the task force was on the right track. Banks should be able to sell insurance in their branches. The evidence simply does not support the continuation of artificial barriers in the retailing of insurance products. The government should resolve this issue once and for all by allowing banks to sell insurance in their branches through trained and accredited individuals provided the appropriate consumer protection and coercive tied selling regimes have been established.

Next, I refer to the prohibition on the merger of big banks and big insurance companies. I should like to say a few words about the government's policy decision to prohibit mergers between large banks and large demutualized life insurance companies.

There are a number of forces working to change the face of the financial services sector. Worldwide, financial institutions are becoming larger as they consolidate to achieve economies of scale and scope necessary to make large investments in information technology and remain competitive. Financial institutions are also facing pressure from competitors engaged in specific lines of business, such as credit cards and discount brokerage. Furthermore, as consolidation takes place in other industrial sectors, it is becoming increasingly necessary for financial institutions to merge in order to marshal the financial resources needed to serve the credit needs of large multinational corporations. Recognizing these forces, the MacKay task force recommended that there be no general policy to prevent Canadian financial institutions from merging.

Bill C-8 acknowledges that mergers are a viable business strategy, but as a matter of policy, the government will prohibit mergers between large banks and large demutualized life insurance companies. The government never gave strong reasons for why this public policy decision was taken. I personally have a number of concerns about this policy.

First, it appears to run counter to global trends in the financial services sector, where new financial institutions are being created from mergers of banks, insurance companies and other financial services entities. Indeed, legislation in countries such as the United States, Australia, the United Kingdom and the Netherlands does not restrict such mergers.

• (1730)

Second, it would appear to put unnecessary constraints on the competitiveness of the Canadian financial services sector. If Canadian financial institutions are to compete in the global financial services market and continue to be strong, viable institutions at home, cross-pillar mergers among the biggest institutions may be necessary.

Third, insurance companies such as Sun Life and Manulife Financial are becoming significant forces in the financial services sector. As the industry converges, banks are becoming more insurance-like and insurance companies are becoming more bank-like. If mergers are a viable business strategy in the banking sector, why are they not a viable strategy for large banks and large insurance companies? There would appear to be little justification for maintaining cross-pillar restrictions where competitive forces are working to bring the sectors closer together in any event. Mergers among these institutions should be judged solely on their merits.

Honourable senators, I believe the government should reconsider this policy restriction. The merger process outlined in the merger of large banks should apply to cross-pillar mergers between large banks and large insurance companies. This process, which examines the impact of mergers on competition, safety and soundness, also looks at mergers from a public interest perspective. Merger proponents will need to demonstrate that the proposed merger will not unduly concentrate economic power or significantly reduce competition or restrict the government's ability to deal with prudential concerns. If a proposed merger between a large bank and a large insurance company can meet these tests, I see no reason for it not to proceed.

**The Hon. the Speaker *pro tempore*:** I wish to advise the Honourable Senator Oliver that his time has expired. Is there a request for leave to continue?

**Senator Oliver:** Yes, honourable senators, I should like to make that request.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

**Senator Oliver:** The final point I will address is the regulation-making authority under the bill. While I understand the need for flexibility to allow the government to respond quickly to new developments in the financial services sector, I am concerned that some of the key elements in the financial services framework will be developed in the regulations. This essentially excludes the House of Commons and the Senate from scrutinizing many serious and important aspects of the financial services sector framework.

Bill C-8, for example, would allow banks to establish regulated, non-operating holding companies. Holding companies will give banks more flexibility to compete with both specialized and regulated firms. The Governor in Council will have the authority to make regulations in relation to a number of aspects of the bank holding company regime. Because many facets of this regime fall under the regulation-making power, they will not be scrutinized by Parliament before they are finalized. Similarly, banks with equity of \$1 billion or more will be required to file annual statements describing their contribution to the Canadian economy and society. Among other things, the contents and form of the statements are to be set out in the regulations. Will the regulations provide for meaningful statements or will they simply authorize what one of my colleagues aptly described as an "annual corporate boast"?

Honourable senators, I believe that Parliament should have an ongoing role in the financial institutions regulatory process. At a minimum, the Minister of Finance should be required to table draft regulations in both Houses of Parliament for a referral to the appropriate parliamentary committees, where they would be reviewed in a timely manner and amended if necessary. This would accomplish two objectives. First, parliamentarians would continue to participate in the development of the financial services sector framework. Second, hearings before a parliamentary committee would ensure that draft regulations would receive greater public scrutiny than is now the case, where the regulatory process tends to attract only those who have a direct stake in the outcome.

[Translation]

**Hon. Roch Bolduc:** Honourable senators, I am not a member of the Senate Committee on Banking, Trade and Commerce, but I have a question perhaps the members of this committee could answer.

When an investor cannot hold more than 20 per cent of the shares of a bank, does that apply only to people in the banking sector or does it apply in the manufacturing sector where a company could not hold more than 20 per cent of the shares? There is quite a difference.

If that concerns the banks, that is fine, but if it applies to another type of business, this means a change to the very nature of our North American system. This concerns me considerably. This is all I have to say for the time being, because I am not well enough informed on this issue. However, it is important to realize the distinction between an investor already in the banking system and another outside the system. This considerably changes the nature of things. It would bring us back to a system like the German system, for example.

Honourable senators, I give you notice that I totally oppose this for a whole series of reasons I could explain to you at another time.

[English]

**Senator Oliver:** As the honourable senator will know, some of the largest holders of shares in banks, trust companies and life insurance companies now would be pension funds. Pension funds are large, and they can hold 5, 6, 7, 8 and 9 per cent of these institutions. We could have 15 pension funds all owing 5 per cent. Would that worry the honourable senator?

**Senator Bolduc:** No.

**Senator Oliver:** A number of Canadian individuals and corporations now own 2, 3 and 4 per cent. There are certain bank directors who now own \$300,000 or \$400,000 worth of bank shares.

**Senator Bolduc:** That does not bother me at all. If businesses such as General Motors or Nortel are able to acquire up to 20 per cent of a banking concern, I would not agree because that changes the system into another economic system.

**Senator Oliver:** Under the bill, that must be approved by the Minister of Finance.

**Senator Bolduc:** I have worked for 18 ministers, so I am not impressed by that statement. Over the course of 35 years, I worked for a new minister every two years. I have more confidence in a regulatory body, which would provide a more independent way of looking at the issue. I believe Senator Kolber is well aware of that.

We should not move in the direction of the German system. The North American banking system is the best in the world. I am not sure that we should, by that increase from 10 to 20 per cent, change the nature of the system. We would have conflicts of interest of all kinds.

The banking industry is not like other industries. The banks distribute credit throughout the whole system. Therefore, they must be objective about managing the risk. I would not like to see a company like Nortel or any other acquire 20 per cent of the Royal Bank. How could the Royal Bank refuse Nortel when they ask for a loan of \$100 million or \$500 million?

I raise that point because it is fundamental to the nature of our economic system in North America.

**Senator Tkachuk:** Honourable senators, I would answer by saying that this issue concerns not only members on our side but members on the other side as well.

On motion of Senator Kinsella, for Senator Angus, debate adjourned.



## CANADA BUSINESS CORPORATIONS ACT CANADA COOPERATIVES ACT

### BILL TO AMEND—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on Banking, Trade and Commerce (Bill S-11, to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence, with amendments) presented in the Senate on April 5, 2001.

**Hon. E. Leo Kolber:** Honourable senators, I move the adoption of this report.

**The Hon. the Speaker** (*pro tempore*): Honourable senators, is it your pleasure to adopt the motion?

**Some Hon. Senators:** Explain!

**Senator Kolber:** Honourable senators, I am pleased to speak to the report of the Standing Senate Committee on Banking, Trade and Commerce on Bill S-11. The bill benefitted from the thorough scrutiny of honourable senators and the technical amendments that the committee adopted. Passage of this bill will result in sound and needed legislation. It is an example of a bill that is now immeasurably stronger as a result of the attention devoted to it by the Senate of Canada before it is sent to the other place.

This bill is a product of extensive review and analysis extending over seven years, nine discussion papers, coast-to-coast meetings by Industry Canada, and parallel consultations and well-reasoned reports by your committee.

Since Bill S-19 was introduced in the previous Parliament, the government has given further consideration to representations made to the Standing Senate Committee on Banking, Trade and Commerce. The bill incorporates these resulting improvements. We now have a final set of amendments from the committee which will fine-tune some areas of the bill. The majority of these amendments were recommended by the government and do not involve a policy issue. In general, these amendments improve inconsistent language, clarify some phrasing, reduce the possibility of legal confusion and harmonize the bill's application to the Canada Cooperatives Act and the Canada Business Corporations Act.

The committee also approved four amendments introduced by Senator Kirby, the sponsor of Bill S-11. These amendments will harmonize certain aspects of the acts that govern Air Canada, the Canadian National Railways, the Canada Development Corporation, Nordion International Limited and Theratronics International Limited with the CBCA.

During our proceedings last month, your committee heard from officials from Industry Canada and the Department of Justice. We also heard evidence from the Task Force on Churches and Corporate Responsibility, the Shareholders' Association for Research and Education, and the Social Investment Organization, among others. We received submissions from the Barreau du Québec and the Coalition for CBCA Reform.

I am sure my colleagues join me in thanking the hundreds of stakeholders who have offered advice and information during the wide-ranging series of consultations and committee hearings.

I especially want to recognize the countless hours and days of study, research and reflection devoted to this bill by members of the Standing Senate Committee on Banking, Trade and Commerce. Our work is responsible not just for improving corporate governance in Canada but also for helping to shape a model of corporate law in Canada. As noted by Senator Hervieux-Payette at second reading, this bill will give corporations and cooperatives greater flexibility in pursuing marketplace opportunities and in serving their shareholders better. They respond to the new ways that Canadian companies are doing business. They encourage corporate governance practices that are related to long-term growth, and they provide a sound framework for prospering in the global marketplace.

Honourable senators, the level of agreement on this bill is exceptionally high. The witnesses who appeared before the committee were all but unanimous in their support for the principles of the bill as it now appears before you.

I am confident that honourable senators will agree that we should approve the recommendations of the Standing Senate Committee on Banking, Trade and Commerce and then approve Bill S-11 as amended. We can send it forward to the other place secure in the knowledge that the Senate has done its work and that this is a solid piece of legislation that will guide the conduct of Canadian business and be of immense benefit well into this new century.

**Hon. Donald H. Oliver:** Honourable senators, I thank Senator Kolber for his commentary on the report. I will add a few words of my own to the report. In particular I raise two main issues. First, measures are needed to ensure that the Canadian Business Corporations Act, as a major component of Canada's business framework legislation, remains a modern statute that reflects and accommodates ongoing developments in corporate law and practice. Second, I will reference measures to promote shareholder activism.

The Canadian Business Corporation Act became law in 1975. The introduction of the CBCA dramatically changed the way corporations were regulated in Canada. The law included many new innovations and became the model for change to provincial corporate law.



Aside from a number of technical amendments made in 1994, the CBCA, however, has been largely unchanged since its inception in 1975. Bill S-11 represents the first substantive amendments to the CBCA in over 25 years. While the amendments were important and I commend the government for both their introduction and the wide-ranging consultative process leading up to Bill S-11, I was struck by the fact that it has been 25 years since the last major overhaul of a very important business framework law.

In a 1997 report, Industry Canada stated:

A well-managed corporate law framework is a fundamental ingredient in increasing Canadian economic prosperity.

I agree with that statement but, in my view, it does not go far enough. A corporate law framework must not only be well managed but it must also be modern. In other words, it must reflect recent legal and corporate practice developments.

We live in a global economy. Indeed, Industry Canada noted that Canadian businesses compete in a global marketplace and will:

...seek the corporate law and administration that most reduces their hard- and soft-transaction costs.

The department has also stated that it is important for Canada to:

...provide excellent corporate law and corporate law administration to help businesses compete in this environment while, at the same time, inspiring investor confidence so that the necessary business capital can be raised.

Clearly then, corporate law must be regularly updated so that corporations can perform effectively and in an increasingly competitive and dynamic global marketplace.

With the passage of the CBCA in 1975, the federal government assumed the role of providing leading-edge corporate law and of establishing the model for other Canadian jurisdictions. Many provincial corporate laws were amended to reflect the CBCA. However, since 1975, a number of these provincial laws have been modernized while the CBCA has languished unchanged on the statute books. Bill S-11 is therefore long overdue.

While I applaud many of the amendments contained in the bill, I am extremely concerned that the government has not put forward a plan to ensure that the CBCA retains its status as Canada's "leading edge corporate law."

In the 1996 report on corporate governance, the Standing Senate Committee on Banking, Trade and Commerce recommended that the CBCA be reviewed by Parliament within

10 years. Industry Canada rejected this recommendation on the grounds that:

...the increased recognition of corporate law and corporate governance issues as factors affecting the competitiveness of corporations will likely ensure the continued improvement of corporate laws.

These words are hardly reassuring. If the government were seriously committed to ensuring that our principal corporations' law provides the framework necessary for Canadian companies to compete in the global economy, it would have enshrined in the bill a mechanism to allow for periodic reviews of the law. In the absence of any plan to regularly review the CBCA, I fear another 25 years may pass before the act is again amended.

I note with great interest that the State of Delaware, long known as an important jurisdiction for incorporating companies, touts the role of its state legislature in keeping Delaware's corporate and other business laws current as one of the reasons for Delaware's leading role in U.S. corporate law.

I am concerned that, once Bill S-11 becomes law, the CBCA will be forgotten. I strongly believe that there should be a periodic review of the act by Parliament. We need a commitment by the government to keep Canada's business framework laws up to date and a commitment to provide the necessary foundation for Canadian businesses to compete in a rapidly changing global economy.

• (1750)

Periodic reviews of the CBCA by Parliament would accomplish three objectives. First, the CBCA would be kept abreast of new developments in legal and corporate practice. Second, periodic reviews would bring the CBCA to a wider audience and heightened awareness of the CBCA among the public. Third, such reviews would allow Parliament to play an important role in the development of business law and policy. I therefore propose that the government add a parliamentary review clause to Bill S-11.

The second and final point I wish to discuss briefly is the proposed amendments to the shareholder proposal provisions of the CBCA. Shareholder proposals are an important vehicle for shareholders to monitor a corporation's performance and influence corporate behaviour. They allow shareholders to circumvent a corporation's management and bring an issue directly before other shareholders. In fact, one commentator rightly noted that the shareholder proposal is one of the few corporate legal tools that shareholders have at their disposal to initiate action and speak directly to other shareholders. The shareholder proposal process provides a formal communication channel between shareholders, management and the board of directors, and with other shareholders on issues such as corporate governance and social responsibility. In many cases, shareholder

advocates do not need to even formally introduce a proposal for their concerns to have an impact. Most often this occurs because management, aware that investors have access to the shareholder proposal process, will agree to discuss issues with shareholders in order to avoid a formal shareholder proposal.

Using shareholder proposals is a right and a responsibility of shareholders, and, in my view, the existence of the shareholder proposal process lays the foundation for a useful dialogue between shareholders and management. Indeed, I would argue that all shareholders have an important financial and moral stake in a vibrant shareholder proposal process.

Traditionally, shareholder proposals have been classified into two categories — corporate governance and corporate social responsibility. Corporate governance proposals address issues such as confidential voting, board of director qualifications, compensation of directors and executives, and board composition. Social responsibility proposals address issues such as company policies and practices on the environment, health and safety, race and gender, working conditions and other human rights issues.

The CBCA's existing shareholder proposal provisions in section 137 give registered shareholders entitled to vote at an annual meeting the right to vote subject to a number of statutory exclusions to have the corporation hold a vote of shareholders on issues that the shareholder making the proposal has brought forward for consideration. Management, however, can refuse to circulate a proposal to other shareholders if it believes that any of the statutory exclusions set out in the CBCA applies. For example, a proposal can be refused if management believes that it is submitted by a shareholder primarily for the purpose of promoting general economic, political, religious, social or other causes. From time to time, religious, environmental and other groups have attempted to circulate shareholder proposals, and corporations have relied upon this exclusion to reject proposals.

Bill S-11 contains a number of amendments to section 137. These amendments to the shareholder proposal would, among other things, allow beneficial shareholders to submit proposals; set minimum share ownership and length of ownership requirements as a prerequisite for submitting a proposal; and, finally, remove from the CBCA the provision that allows management to refuse to circulate a shareholder proposal that it believes is to promote general economic, political, racial, religious, social or similar causes and replace it with a new provision that would allow management to refuse to circulate a shareholder proposal "if it clearly appears that the proposal does not relate in a significant way to the business or affairs of the corporation." I think that this is a very important change and improvement.

Honourable senators, the shareholder proposal provisions have been one of the most contentious areas of CBCA reform. Witnesses before the Standing Senate Committee on Banking,

Trade and Commerce argue that the public dimension of a corporation's influence and impact is as legitimate a concern to shareholders as its private dimension. The Task Force on the Churches and Corporate Responsibility, for example, maintained that it is increasingly difficult to separate the business and social implications of corporate decisions. Indeed, one of the most recent and public shareholder proposal battles surrounded attempts by the Task Force on the Churches and Corporate Responsibility to circulate a proposal to the shareholders of Talisman Energy Inc. asking for a report on the impact and risk of investing in Sudan.

Institutional investors are also using shareholder proposals as a way to influence corporate governance practices. More recently institutional shareholders have been taking a closer look at executive compensation packages. Studies are now beginning to cast doubts on the effectiveness of the huge compensation packages received by corporate CEOs. They do not ensure executive loyalty. Stock options can be ineffective, and the fact that executives continue to receive significant salary increases and stock options in the face of poor corporate performance weakens the justification for skyrocketing compensation packages.

Honourable senators, I believe it is important to strike the appropriate balance between the right of shareholders to engage in direct democracy and the need to ensure that shareholder proposals are relevant to a corporation's business. Furthermore, I believe that we are about to enter a new era in shareholder democracy where institutional investors, financial advisers, faith-based groups, social justice, labour and environmental organizations, and a broad number of individuals and groups will use their investing power to encourage corporate responsibility. This, I believe, will have a positive impact on corporations. Indeed, data collected in the U.S. and European companies suggests that effective shareholder involvement adds value to companies.

The Internet is likely to have an important impact on shareholder activism as well. The proliferation of Web sites dealing with shareholder activism gives both institutional and individual shareholders opportunities to monitor corporate performance, discuss corporate issues and obtain information about shareholder initiatives. In this regard, the Internet has the potential to become a very important tool for shareholder democracy.

Honourable senators, the proposed amendments to the shareholder provisions of the CBCA will go some way toward enhancing democracy at the shareholder level. Allowing beneficial shareholders to put forward proposals and taking away a corporation's ability to reject the proposal because management is of the view that it relates primarily to general economic, political, racial, religious, social or similar causes are important steps forward.



In conclusion, we are already witnessing an increase in socially responsible investing and in concern among shareholders about corporate governance issues. As corporate social responsibility and corporate governance issues become of greater importance, and as increasing numbers of shareholders believe that social responsibility and corporate governance measures relate to long-term shareholder value, shareholder proposals are likely to have a greater impact on corporations.

**The Hon. the Speaker pro tempore:** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and report adopted.

**The Hon. the Speaker pro tempore:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

[Translation]

## FOOD AND DRUGS ACT

### BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Corbin, for the second reading of Bill S-18, to amend the Food and Drugs Act (clean drinking water).—*Honourable Senator Robichaud, P.C.*

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I asked for the adjournment of the debate on this bill to allow those senators who wish to address this bill to do so. It goes without saying that drinking water is a very important issue which should be carefully examined.

**The Hon. the Speaker pro tempore:** Honourable senators, if no other senator wishes to speak, the debate will be deemed to have ended.

Motion agreed to and bill read second time.

### REFERRED TO COMMITTEE

**The Hon. the Speaker pro tempore:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Grafstein, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

[English]

• (1800)

**The Hon. the Speaker pro tempore:** Honourable senators, I wish to inform you that it is now six o'clock. Is it agreed that we not see the clock?

**Hon. Senators:** Agreed.

## BILL TO REMOVE CERTAIN DOUBTS REGARDING THE MEANING OF MARRIAGE

### SECOND READING—DEBATE ADJOURNED

**Hon. Anne C. Cools** moved the second reading of Bill S-9, to remove certain doubts regarding the meaning of marriage.—(*Honourable Senator Cools*).

She said: Honourable senators, I move the adjournment of the debate.

**The Hon. the Speaker pro tempore:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Marcel Prud'homme:** Honourable senators, might I ask for some clarification? What I am about to ask, honourable senators, is not only on my behalf but on the behalf of some new senators who have asked me what the word "fifteen" means beside the No. 9 under Other Business on the Order Paper. Does this "fifteen" mean that after today it will fall off the Order Paper?

It has been my understanding that if, after 15 days, no senator has spoken to the item it is dropped from the Order Paper. Honourable senators, am I right in that regard or not?

**The Hon. the Speaker pro tempore:** I would inform Senator Prud'homme that my understanding is that the item is restored and goes to number one.

**Senator Prud'homme:** I thank His Honour.

On motion of Senator Cools, debate adjourned.

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

### FOURTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Committee on Internal Economy, Budgets and Administration (budgets of certain Committees) presented in the Senate on April 5, 2001.—(*Honourable Senator Kroft*).

**Hon. Richard H. Kroft** moved the adoption of the report.

Motion agreed to and report adopted.



[Translation]

### SCRUTINY OF REGULATIONS

#### BUDGET—REPORT “B” OF JOINT COMMITTEE ADOPTED

The Senate proceeded to consideration of the first report “B” of the Standing Joint Committee for the Scrutiny of Regulations (Budget 2001-2002), presented in the Senate on April 5, 2001.—(*Honourable Senator Hervieux-Payette, P.C.*).

**Hon. Céline Hervieux-Payette** moved the adoption of the report.

Motion agreed to and report adopted.

[English]

### STUDY ON AGRICULTURE AND AGRI-FOOD INDUSTRY

#### BUDGET AND REQUEST FOR AUTHORITY TO TRAVEL AND ENGAGE SERVICES—REPORT OF AGRICULTURE AND FORESTRY COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Agriculture and Forestry (budget—special study on agricultural health) presented in the Senate on April 5, 2001.—(*Honourable Senator Gustafson*).

**Hon. Leonard J. Gustafson** moved the adoption of the report.

Motion agreed to and report adopted.

### SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

#### COMMITTEE AUTHORIZED TO STUDY STATE OF FEDERAL GOVERNMENT POLICY ON PRESERVATION AND PROMOTION OF CANADIAN DISTINCTIVENESS

On the Order:

Resuming debate on the motion of the Honourable Senator Kirby, seconded by the Honourable Senator Poulin:

That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine and report upon the state of federal government policy relating to the preservation and promotion of a sense of community and national belonging in Canada. In particular, the Committee shall be authorized to examine:

(a) the effectiveness of the policies, programs, symbols and institutions that have been used in the past to

promote and protect Canadian distinctiveness or which have fostered an element of Canadian distinctiveness merely by their existence;

(b) the effects of globalization and rapid technological change on Canada's ability to preserve and promote its distinctiveness at home and abroad;

(c) the options that exist to modernize federal policies with respect to preserving, creating and promoting the uniqueness of Canada in a changing national and international context;

(d) the opportunities that exist to use new technologies to market our unique qualities to the world and to engender pride in Canadians about themselves and their country.

That the Committee submit its final report no later than December 20, 2002; and

That the Committee be permitted, notwithstanding usual practices, to deposit any report with the Clerk of the Senate, if the Senate is not then sitting; and that the report be deemed to have been tabled in the Chamber.—(*Honourable Senator Lynch-Staunton*).

**Hon. John Lynch-Staunton (Leader of the Opposition)** Honourable senators, this item is standing in my name. I am satisfied with it and am willing to have it voted on now.

**The Hon. the Speaker pro tempore:** Honourable senators, the house ready for the question?

**Hon. Senators:** Agreed.

**The Hon. the Speaker pro tempore:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

### DEFERRED MAINTENANCE COSTS IN CANADIAN POST-SECONDARY INSTITUTIONS

#### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Moore calling the attention of the Senate to the emerging issue of deferred maintenance costs in Canadian post-secondary institutions.—(*Honourable Senator Meighen*).

**Hon. Michael A. Meighen:** Honourable senators, it is with great pleasure that I rise to speak to Senator Moore's inquiry respecting the issue of deferred maintenance costs of Canada's post-secondary institutions.

As honourable senators may be aware, Senators DeWare and Callbeck have already spoken to this important inquiry. Just as they focused their words on the provinces they represent, I will direct at least some of my attention to the situation in the province of Ontario.

Honourable senators, anyone who has lived in a house for any length of time knows about maintenance. Roofs eventually need new shingles. Driveways need repaving. Windows need replacing. The longer one lives in the house, the longer the list gets. Some of this maintenance requires immediate attention; some of it can be delayed for a year or two. Just as the list of maintenance projects for a family home increases with the age of the house — even the best constructed roof will eventually leak — so maintenance requirements of Canadian universities are increasing for buildings that are 40 or 50 years old or older.

Moreover, for universities, maintenance and renewal requirements are geared to more than just minimum safety requirements such as repairing leaky roofs. University buildings must also be able to meet changing curriculum needs and advances in equipment and technology. Today, we find older buildings that lack the wiring necessary for computer intensive tasks.

Buildings on campuses must also meet new building codes, such as accessibility for handicapped students, and they must meet new environmental regulations. Unfortunately, honourable senators, maintenance and infrastructure spending at Canadian universities has suffered dramatically in the last two decades. As enrolment rose and funding decreased, there was less and less money to maintain and improve the existing infrastructure.

From 1981 to 1998, the number of full-time students at universities jumped by over 44 per cent, increasing from 402,900 to 580,400. In the meantime, government funding was dropping almost as dramatically. In the period from 1993-94 to 1998-99, for example, federal government grants and contracts to universities in real dollars fell by 9.4 per cent, while provincial government grants and contracts fell by 10.2 per cent.

• (1810)

Faced with falling government funding, universities responded by cutting costs and relying on other sources of funding. Unfortunately, some of the cost-cutting meant delays in needed maintenance. Re-establishing this spending implies the search for increased government funding or increases in alternative funding.

A recent study by the Canadian Association of University Business Officers estimated that our institutions have accumulated deferred maintenance costs of \$3.6 billion. There is some evidence to suggest that the amount may indeed be considerably higher. Approximately one third of deferred maintenance costs — \$1.2 billion — are considered to be urgently needed.

Accumulated deferred maintenance is, to use the terminology of the report, "a backlog of unfunded major maintenance and renewal projects that have been deferred to future budgets." Comparing accumulated deferred maintenance — or ADM as it is commonly known — to the current replacement value of university infrastructure provides a measure of the problem of delayed maintenance.

When one compares ADM costs to the replacement value of an institution, the result is an internationally recognized and accepted ratio known as the facility condition index. The facility condition index in Canada for all universities is estimated to be 11.3 per cent. An acceptable level would be in the 2 per cent to 5 per cent range. In the United States, for example, the facility condition index for universities now stands at approximately 7 per cent.

By some measures, honourable senators, universities in Ontario are the best place among Canadian universities with respect to accumulated deferred maintenance costs. The facility index in this province is estimated to be 9 per cent — the lowest of the four regions in the university report. At 9 per cent, the facility condition index for Ontario is still above the 7 per cent of the United States and well above the comfort range of 2 per cent to 5 per cent.

Also disconcerting is the infrastructure age of Ontario universities. Greater than one half — 57 per cent — of campus space in Ontario comes from the 1960s or earlier. Only 18 per cent of Ontario campus space was built in the 1980s or 1990s.

In terms of ADM per student, Ontario is also considered to have the lowest of the four regions. However, the size of Ontario means that a fairly small problem vis-à-vis other regions or provinces can be a large problem in absolute terms. The ADM in Ontario is now estimated to be as high as \$2 billion, representing a significant portion of the maintenance requirements for all Canadian universities.

Given the demand for billions of dollars to cover the accumulated deferred maintenance costs at Canadian post-secondary institutions, it is tempting to simply look to governments, whether federal or provincial, for the money.



[Translation]

Governments hesitate to take on new obligations for several reasons. The first is that the high government deficits of the past were due in part to the tendency of governments to want to do too much or, at least, to try to do too much with available resources.

People are not interested in reliving the budgetary highs and lows, with deficits inevitably followed by budget cuts and serious consequences for social programs.

The government could consider the possibility of earmarking a portion of fiscal surpluses for programs such as improving the infrastructure of university institutions. Unfortunately, anticipated fiscal surpluses are not always a sure thing, particularly when one considers the present government's inactivity. It would therefore be a good idea for Canadian universities to examine all possible sources of funding.

In 1997-98, spending on post-secondary education in Canada climbed to \$16.9 billion. The federal government contributed approximately 10% of necessary funding. Provincial governments contributed 60 per cent, and 30 per cent of funding came from fees and various sources. These various sources include not just tuition fees, but also investment income, sales of products and services, donations, and non-government grants and contracts.

I believe that it is towards these other sources of revenue that universities must turn in order to determine whether they are doing everything in their power to maximize their available resources.

[English]

In particular, honourable senators, I believe that there may be a real opportunity here for universities to further attract donations and bequests, not only from their alumni but also from the corporate community and others. Gifts to universities can help to cover current expenditures or they can be put into endowment funds to produce investment income over time. In the U.S., endowments are an important source of income for many universities, especially for those with world-class status.

Honourable senators should note that a gift that bears a specific intent, such as the construction of a new building, may free up funds for other operating requirements, such as needed maintenance. In Canada, the University of Toronto appears to have taken a lead in this area, and it may provide a model for other universities.

The University of Toronto, in its National Report 2000, states that it is the "largest higher education enterprise in Canada and

the fifth largest in North America." The word "enterprise" is certainly an apt choice of words to describe an institution with an enrolment of over 50,000 students and several campuses spread across the city of Toronto.

The market value of the University of Toronto's endowment is about \$1.3 billion, which outstrips by about \$500 million the endowment of the Canadian university with the second largest endowment. Income from endowment investments now provides about 10 per cent of the University of Toronto's funds.

For the 12-month period of May 1, 1998 to April 30, 1999, the University of Toronto raised the staggering amount of \$135 million. Alumni provided 27 per cent; corporations provided 25 per cent; and the largest portion was provided by friends of the university. Other Canadian universities need such friends.

Honourable senators, the University of Toronto has not simply waited for such friends to appear. It has been active and innovative in searching for donations. Recently, the university announced its latest fundraising campaign. The press release accompanying the announcement said:

Having surpassed our goal to raise a minimum of \$575 million in private support, we are working with our alumni and friends to raise \$1 billion and to extend the campaign by an additional two years, through 2004. The objective of our \$1 billion vision: to attract top students and faculty, and provide the facilities they need to meet the potential.

The University of Toronto's work in obtaining donations has been recognized across the continent. Recently, Professor John Dellandrea, Vice-President and Chief Development Officer, was awarded the Laureate Award from the Institute of Charitable Giving, North America's leading training centre for major gift fundraising. Professor Dellandrea serves as the President of the University of Toronto Foundation and is the first Canadian to receive this honour.

Honourable senators, the University of Toronto's excellence in raising funds to support its quest for academic excellence should be an inspiration, if not a challenge, to other Canadian universities.

An alternative that both universities and governments may wish to consider is the use of tax-exempt bonds. These bonds are tools that have been used extensively at the municipal level in the United States. As the terminology implies, interest earned on a tax-exempt bond is not taxable to the extent of the exemption. This tax-exempt status allows municipalities to issue bonds that pay less interest than other bonds, while ensuring that bond purchasers receive a fair return on their investment.



There would be, of course, a cost to government in the form of lost tax revenue. However, this cost could be lessened if the federal and provincial governments worked together to share the burden. I am no expert in matters of municipal bonds, but it seems to me that this innovative approach merits some consideration. Indeed, a well-known hospital in Toronto has had its new construction completely financed by a bond issue that has no tax-exempt status. Nevertheless, it was able to float the bond issue to provide the funds for the construction that was so desperately required today.

• (1820)

Honourable senators, in closing, we can all acknowledge the importance of human capital if Canada is to succeed in the knowledge-based world economy. We can appreciate the role of our schools and universities in improving our stock of human capital. Just as students need books and, these days, state-of-the-art computers, they also need adequate buildings on campus. Canada and its universities simply cannot afford to put off the needed maintenance of our infrastructure at our post-secondary institutions. Together, we must work to find ways to address the problem of accumulated deferred maintenance.

I congratulate Senator Moore for initiating this inquiry, and I support him and his work.

On motion of Senator Andreychuk, debate adjourned.

#### FOREIGN AFFAIRS REPORT ENTITLED "THE NEW NATO AND THE EVOLUTION OF PEACEKEEPING: IMPLICATIONS FOR CANADA"

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Andreychuk calling the attention of the Senate to the seventh report of the Standing Senate Committee on Foreign Affairs: *The New NATO and the Evolution of Peacekeeping: Implications for Canada*.—(Honourable Senator Roche).

**Hon. Douglas Roche:** Honourable senators, about one year ago, the Standing Senate Committee on Foreign Affairs, after extensive study, tabled a report: "The New NATO and the Evolution of Peacekeeping: Implications for Canada."

On April 3, 2001, Senator Andreychuk, in an important address, reviewed this report from the perspective of a year's experience. Senator Andreychuk's timely action has opened anew the debate on Canada's role and responsibilities in the

complicated intertwined agenda of peacekeeping, peacemaking and peace-building.

In short, we now know that the international community must find a way to reconcile respect for the sovereign rights of states with the need to act in the face of massive violations of human rights and humanitarian law. Decisions about military intervention are extremely difficult. Canada, in order to uphold our basic tenet of respect for international law, must be very careful in how it proceeds in effort to diffuse or help resolve conflicts abroad.

A fundamental question in this debate is the establishment of a credible force for peace in the 21st century and the application of the rule of law. The thrust of my thinking is to ask: How will international law be imposed in years ahead? By the militarily powerful determining what the law will be, or by a collective world effort reposing the seat of law in the United Nations system?

I ask this question at the outset because of the 1999 Kosovo experience when Canada put its allegiance to NATO ahead of its obligations to international law as enshrined in the United Nations Charter. With many others, I maintain that NATO's bombing operation over Kosovo and Serbia, considered a humanitarian intervention by many, was illegal and a massive miscalculation. I will not restate my opposition here because I have already done so in many forums, including this chamber, at the time of the bombing. However, I cannot ignore the costs of NATO's miscalculation.

NATO's countries engaged in the Kosovo campaign admitted to spending more than \$4 billion in 78 days of bombing, dropping more than 23,000 bombs and missiles. On the first night of the war, NATO launched more than \$71 million worth of weapons with just 30 flights. By the last week of the air campaign, the alliance had 36,300 personnel in the Balkans and across Europe, playing a part in up to 700 sorties every day.

A Human Rights Watch Report from February 2000 concluded that as many as 527 Yugoslav civilians were killed in 90 separate incidents as a result of NATO bombing.

We must learn from the mistakes of the Kosovo war. Canada must be brave enough to never turn its back on the principles that have served us so well in the past. It must abide by the rules of the UN Charter, while striving to further reform that body and its institutions. Canada must refuse to intervene militarily in the domestic affairs of a sovereign state without Security Council or General Assembly approval.

What Kosovo and later East Timor and before them Rwanda and Bosnia demonstrate is the dire need for an effective international interventionist force with a sense of purpose and cohesion, particularly in the cause of restoring order and establishing the foundations for peace-building.

The UN Security Council remains the paramount global instrument to safeguard peace and security. A strong, effective and purposeful council is, therefore, imperative for the maintenance of international stability. But what of its credibility? As nations flout their responsibilities to it and alliances ignore it, many perceive the Security Council as falling short of its responsibilities. The UN is chronically hampered by lack of resolve, yet it is difficult to escape one great irony of our age: the powers reluctant to support the UN on the grounds that it is inefficient or incompetent are the very ones that render it so.

Expectations of the UN's ability to keep and enforce the peace have exploded in the decade that followed the end of the Cold War. There have been 54 United Nations-mandated peace, humanitarian and observer missions through December 31, 2000. Thirty-five of these were initiated in the 1990's alone. Most remarkable, however, is that many of these missions have involved unprecedented responsibilities and conflicts within states rather than between them, and where there was no peace to keep but to be imposed.

The UN has continually found itself poorly equipped to address the reality that 90 per cent of today's wars are internal and 90 per cent of the victims are civilian. Such developments have fundamentally changed the nature of the security problem that we face. The traditional one still exists, but it is now being complicated by a much different set of security issues and, therefore, we must change our ability to respond.

Throughout the 1990s, NATO became stronger and the UN became weaker, just the reverse of what was needed to build a foundation for peace supportable by all the regions of the world following the Cold War.

Canada, for its part, has worked diligently at the UN for the establishment of a rapid deployment capacity that could effectively respond to complex humanitarian emergencies such as those faced by peacekeepers throughout the 1990s. Canada tabled a study towards a rapid reaction capability for the United Nations at the fiftieth session of the General Assembly. This groundbreaking study offered a number of concrete recommendations to enhance the UN's capacity to respond rapidly and deploy more effectively in crisis situations.

Canadian efforts within the Secretary-General's special committee on peacekeeping operations, appointed in March, 2000, have underlined that a rapid deployment capability for the UN is a comprehensive concept that requires cooperation across the UN system, as well as action and commitment by member states.

Fortunately, the UN is moving forward on a peacekeeping agenda that has been considerably influenced by Canadian efforts. An important UN report on UN peace operations, known

as the Brahimi report, was issued a few months after the Senate report on NATO. The Brahimi report, listing 56 recommendations to improve planning, preparation and execution of peace operations, should be studied extensively by all NATO members. The report provides the international community with a blueprint for developing the kind of effective response to complex humanitarian emergencies so desperately needed in every region of the world.

This valuable and comprehensive report gives substance to the high hopes expressed both in the Secretary-General's Millennium Report and at the Millennium Summit for developing a pragmatic and practical framework to improve the effectiveness of peacekeeping operations. Many of the report's recommendations are consistent with longstanding Canadian concerns and initiatives in peacekeeping, including the requirement for clear and achievable mandates, matching mandates with appropriate resources and the development of rapid deployment capacities.

The report's recommendations focused not only on politics and strategy but perhaps even more importantly on operational and organizational areas of need. These include, and I will list just a few, honourable senators:

First, mandates that provides peacekeepers with robust rules of engagement and defining peacekeeping as a core function of the UN rather than a temporary necessity by substantially increasing resources in UN headquarters devoted to supporting peacekeeping field operations.

Second, doctrines that call for more effective conflict prevention strategies, pointing out that prevention is far more preferable for those who would otherwise suffer the consequences of war and a less costly option of the international community than military action, emergency humanitarian relief, or reconstruction after a war has run its course.

• (1830)

Third, developing peace-building strategies in which peacekeepers and peace builders are inseparable partners, creating a self-sustaining peace that allows a ready exit for peacekeepers. Such efforts would include the deployment of a panel of legal experts facilitating the transition to civil administration in post-conflict environments pending the re-establishment of local rule of law and law enforcement capacity.

Fourth, personnel must be provided by member states in order to work together to form a coherent, multinational brigade-type force that is ready for effective deployment within a set of full deployment time line standards of 30 days for traditional, and 90 days for complex peacekeeping operations following passage of a Security Council resolution.



We should note that this report does not call for a standing UN army, but it does call for the establishment of on-call lists of about 100 military and about 100 police officers and experts from national armies and police forces who would be available on seven days' notice to establish new mission headquarters.

On October 20, 2000, Secretary-General Annan submitted his own report on implementing the Brahimi report. He stressed that the 56 recommendations applied to armed UN missions deployed with the consent of all factions, rather than as a series of steps to create a UN army. He also cautioned that peacekeeping operations should not be used as a substitute for addressing the root causes of conflict, which can only be remedied by coordinated political, social and developmental efforts.

Many key components of the report, particularly the resolve to give UN peacekeeping missions clear, credible and achievable mandates, were unanimously adopted on November 13, 2000 in UN Security Council resolution 1327. This is encouraging, but a great deal more work needs to be done, both by individual member states and at the international level.

In short, the world especially needs to find a way to reconcile seemingly irreconcilable notions of intervention and state sovereignty. Canada is currently making an important contribution in this area through its sponsorship of the International Commission on Intervention and State Sovereignty. Originated by Canada's former foreign minister, Lloyd Axworthy, the commission, headed by Gareth Evans of Australia and Mohammed Sahoun of Nigeria will try to advise the UN on when intervention is justified, taking into account all the key issues — political, ethical, legal and operational.

There are times when the use of force may be legitimate in the pursuit of peace, but unless the UN Security Council is restored to its pre-eminent position as the sole source of legitimacy on the use of force, the world is perilously foregoing law for anarchy. NATO cannot be permitted to determine by itself when force will be used. We would do well to reflect upon UN Secretary-General Kofi Annan's words to the UN General Assembly on September 20, 1999. He said:

...in the event that forceful intervention becomes necessary, we must ensure that the Security Council, the body charged with authorizing force under international law, is able to rise to the challenge... intervention must be based on legitimate and universal principles if it is to enjoy the sustained support of the world's peoples.

Honourable senators, the Brahimi report embodies much of Canada's yearning for peace. However, the elements of the UN secretariat responsible for peacekeeping remain underfunded, understaffed and unprepared to administer a country in a post-conflict environment. However, the assumptions that the UN cannot be called upon to undertake complex peace missions

and that regional organizations such as NATO should handle all elements of them are not credible. Better that the UN be prepared for such missions because force alone cannot create peace. Peace can only be built by sustained political support, an integrated and rapidly deployable force and a sound peace-building capacity of the United Nations. Strengthening the abilities and the credibility of the UN must be Canada's prime foreign policy goal.

On motion of Senator Prud'homme, debate adjourned.

## RECOGNITION AND COMMEMORATION OF ARMENIAN GENOCIDE

### MOTION—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Maheu, seconded by the Honourable Senator Settlakwe:

That this House:

(a) Calls upon the Government of Canada to recognize the genocide of the Armenians and to condemn any attempt to deny or distort a historical truth as being anything less than genocide, a crime against humanity.

(b) Designates April 24th of every year hereafter throughout Canada as a day of remembrance of the 1.5 million Armenians who fell victim to the first genocide of the twentieth century.—(*Honourable Senator Di Nino*).

**Hon. Marcel Prud'homme:** Honourable senators, 35 years ago, I was in the House of Commons. I organized the first visit of the Armenian community to Parliament. Thirty-five years is a long time. I have been close to the Armenian community during that time. The able Deputy Prime Minister of Quebec, who is now in the Senate, the member from Île-Saint-Laurent who was a municipal councillor, and many other members of the House of Commons, the Senate and the National Assembly of Quebec have all been close to the Armenian community. I am the oldest.

I recall all the speeches that I made in the House of Commons over the years that are simply in favour of the Armenian cause. I did not speak out against any other country. I know the sensitivity of our friend from Turkey on this issue. I am not part of any cabal against one country in favour of another.

I have been carrying on my work of dealing with many diverse issues at international gatherings. I recently returned from Cuba with the Honourable Senator Finestone who acted as presiding officer of the International Parliamentary Union.



Had today's date not been April 24, I would not have spoken. Senator Maheu's motion makes specific reference to April 24. Perhaps a miracle will happen on this day and we will find ourselves in total agreement.

When I sit down, senators will be asked if anyone else wishes to speak. If nobody wishes to speak, perhaps someone will ask to adjourn the debate in his or her name. I do not know what will happen.

The motion is clear. It does not require that I make a speech. My views on this issue are on record in the House of Commons and in Montreal, Quebec, and I have expressed them for over 35 years. I even studied this issue with the late Honourable Jean-Luc Pépin who was my professor of political science. He dealt with this issue at the University of Ottawa in the 1950s when studying the Treaty of Sèvres, which everyone signed and forgot thereafter.

I wanted to be on record. My friends in the Armenian community will understand that I could have spoken much longer on this issue. However, they know where I stand. I hope that our friends, good Canadians of Turkish origin, will not take this as an insult to them. I know how strongly they feel. However, this is a historical event. I know other senators will want to participate in this debate.

Usually I attend all the commemorative events on April 24. However, this year I was unable to do so.

• (1840)

However, I wanted to be on record as having stood up today to say that I do support this clear motion by Senator Maheu and by our new friend, Honourable Senator Setlakwe. I thought Senator Setlakwe was of Lebanese origin, but he is of Armenian origin. It is good that I also put that on record today. Senator Setlakwe did so in his own speech.

Honourable senators, I am on record. I have spoken. I support this great motion, especially today, April 24.

**The Hon. the Speaker:** Honourable senators, before I put the motion of Senator Bacon, I observe that the item on the inquiry is standing in the name of Senator Di Nino, who I assume wishes to speak. Perhaps I could ask honourable senators whether they wish this matter to continue to stand in the name of Senator Di Nino.

**Senator Kinsella:** No.

**Some Hon. Senators:** No.

On motion of Senator Bacon, debate adjourned.

## THE NATIONAL ANTHEM

### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Poy calling the attention of the Senate to the national anthem.—(*Honourable Senator Pépin*).

**Hon. Shirley Maheu:** Honourable senators, our colleague Senator Poy has asked me to look at the English translation of our national anthem. I wonder how many of us have found the time to think just a little about that request. I wonder how many of us have asked ourselves whether it is a cultural concern or perhaps a feminist concern or, more likely, whether some honourable senators think, "Here we go again, women wanting to change things."

Personally, I had not been overly preoccupied with the word "all our sons command." However, when I stopped to think about them, I could not overlook the preceding words "true patriotic love."

[*Translation*]

Honourable senators, have we forgotten that, in both world wars, huge numbers of women worked in manufacturing plants turning out such things as bombs, parachutes and planes? They were found to be conscientious, meticulous, patient and highly motivated — in a word, patriotic.

More than 50 years later, it is perhaps high time certain things were corrected. Perhaps I might raise certain points. Thanks to our Prime Minister, women make up more than one-third of our Senate at this time. Often, change starts with ideas that originate with the Senate and the senators. Why then not review our national anthem? Let us at least throw out the idea!

Great changes have taken place since the two great wars and they have transformed us forever. The arrival of women in the work force has brought great changes to who we are. We communicate differently, our motivations are different, we no longer think in the same way.

[*English*]

Honourable senators, the immersion of women in the working environment proposed new ways of doing things. For example, Faith Popcorn published a reference work entitled "Clicking." The author mentioned that there are numerous differences between men and women — thank God for differences. For example, while men work habitually through hierarchy, women use teamwork. While men demand answers, women ask questions, and they ask the right questions. While men identify to a role, women adapt to many roles. While men resist change, women seek change. While men are goal driven, women are process aware. While men want to reach a destination, women enjoy the travel. While men manage, women develop relationships. Are these differences the new political way of doing business?

[*Senator Prud'homme*]

[Translation]

All these changes for women notwithstanding, we must not believe that the principles of equity and equality have been achieved in all spheres of our society.

[English]

Again, according to author Faith Popcorn, women have had enough of being spectators in the decision-making process. Women are tremendous pools of resources that we cannot neglect, even if many stereotypes continue to haunt the scene.

[Translation]

We know that rites and rituals help forge Canadian culture and a common identity. It is very important, especially in a time of globalization to build a shared identity to compensate for the fragmentation resulting from the various identities. This can be seen from East to West in our country. It is certainly for a reason that so many Canadian minority groups form alliances with one another in order to form a tighter bond, because they feel alienated.

We are responsible for this situation, and we must do our best to rebuild a feeling of belonging in Canada. We can ask ourselves what the purpose is of having a strong national culture. In truth, it helps counter the uncertainty arising from the globalization of markets. In this way, we will be able to harmonize individual and collective interests. In this sense, the provinces form a federation.

A strong culture promotes debate across the country, and if we neglect it, great tensions arise and slow all forms of change. It is very important our country present a realistic portrait of what we were, what we are and what we are becoming. The national anthem must reflect not only our history, but who we are and, of course, the image we want to project.

Obviously, culture includes one of the most important elements, such as communication. In all forms of communication, there is a sender and a receiver. Between the two of them, the phenomenon of interpretation and decoding can create distortion. Too often, someone sends a message, and the receiver decodes the message differently. Effective communication means that the message understood is what the sender intended.

[English]

Do you really feel that the words "all our sons command" reflect the message that we wish to leave to our young Canadians? We all see the reality through our rose-coloured glasses. With that, we interpret reality as we would like to see it or as our background permits us to see it.

• (1850)

I ask honourable senators: How do you think we feel when we hear the national anthem address a masculine reality? How do you think we can identify ourselves, or even want to contribute, if we feel left out of our own national anthem?

Last year, the sculpture of the Famous Five by Barbara Paterson was unveiled. At the breakfast on the eve of the unveiling, the guest speakers were the Right Honourable Beverley McLachlin, Chief Justice of the Supreme Court of Canada; the Honourable Anne McLellan, Minister of Justice and Attorney General of Canada; and Daphne Dumont, President of the Canadian Bar Association.

In 1929, women were declared persons, but was the political will to accept that declaration really there? Did anyone think of women when the English version of the national anthem was accepted? Was the political will there then?

Senator Poy has drawn the national anthem to our attention and is suggesting a change to non-sexist language. Is the political will there now?

Our Chief Justice spoke of many important and impressive achievements of the Famous Five, saying they provide an enduring example of how the law can be employed as an instrument of social change. Chief Justice McLachlin also left us with a quotation from the speech of Her Majesty Queen Elizabeth on the laying of the cornerstone of the Supreme Court in May 1939, when she said:

Perhaps it is not inappropriate that this task should be performed by a woman; for woman's position in civil society has depended upon the growth of the law.

Is today's society ready to accept a law reforming our English version of the national anthem? Is the political will there now? Our Minister of Justice, Anne McLellan, spoke about remembering, even as we celebrated. We must acknowledge that the struggle for equal opportunity is not yet won.

We were also reminded that there are thousands of unsung heroes, no less treasured than Nellie McClung of the Famous Five, for their daily contributions to the betterment of our society.

Honourable senators, think about the wording of the English version of our national anthem. What about recognizing the contribution of our women of today and those in the future?

Last October, Daphne Dumont reminded us of the Famous Five and their legacy — the recognition of women as persons. She spoke about the positions of the Chief Justice, the Minister of Justice and the President of the Canadian Bar Association, all women in leadership positions in the legal profession. This is a first for our country.

I refer in some detail to last October's Famous Five celebrations because, as the President of the Canadian Bar Association pointed out, this event recognizes the role of one of Canada's most successful voluntary women's groups in leading change in our country. To measure their success, we need only look at today's many different forums for advocacy.

We also heard that there are two types of history: the kind we look back on and the kind we make ourselves. The Famous Five were not content with the status quo. They believed that they could change the world, and they did. The lesson for us today is that the power to make history is always in our hands.

Honourable senators, do not Canadian women of the past and Canadian women of the future deserve recognition in the English version of our national anthem?

**Hon. Vivienne Poy:** Honourable senators, I move adjournment of this inquiry in the name of Senator Beaudoin.

**The Hon. the Speaker:** Honourable senators, I note that this inquiry stood in the name of Senator P  pin. Our custom is that if someone wishes to speak, then we go ahead with that. I simply observe that this inquiry was standing in the name of Senator P  pin.

**Senator Poy:** Honourable senators, it is fine to leave standing in the name of Senator P  pin.

**The Hon. the Speaker:** Is it agreed, honourable senators, that this inquiry stand in the name of Senator P  pin?

**Hon. Senators:** Agreed.

On motion of Senator Poy, for Senator P  pin, debate adjourned.

The Senate adjourned until Wednesday, April 25, 2001, at 1:30 p.m.



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CANADA

# Debates of the Senate

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OFFICIAL REPORT  
(HANSARD)

Wednesday, April 25, 2001

—

THE HONOURABLE ROSE-MARIE LOSIER-COOL  
SPEAKER *PRO TEMPORE*



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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Wednesday, April 25, 2001

The Senate met at 1:30 p.m., the Speaker *pro tempore* in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### HEALTH

##### PROTECTION OF INTEGRITY OF SYSTEM IN TRADE LIBERALIZATION INITIATIVES

**Hon. Wilbert J. Keon:** Honourable senators, the Canadian Medical Association is the national voice of Canadian physicians. Founded in 1867, the CMA's mission is to provide leadership for physicians and to promote the highest standard of health and health care for Canadians. Many senators had the opportunity to meet some of its members during a parliamentarians' and physicians' breakfast at the beginning of this month.

I wish to take this opportunity to bring to your attention, honourable senators, a letter that the CMA recently sent to the Prime Minister. All of you have received a copy. The objective of the letter is to underline the importance of protecting the integrity of Canada's health care system during the Quebec City Summit of the Americas and in any future negotiations.

Dr. Peter Barrett, President of the CMA, encourages the Prime Minister and the government to ensure that all necessary safeguards are put in place to shelter our health care system, including all its component parts, from the encroachment of trade liberalization. Hence, Canada's health care system should remain outside of the trade liberalization talks.

Dr. Barrett reiterates, as previously exposed in the CMA's December 2000 brief to the Minister of International Trade, that while trade liberalization has positive and economic development implications, its goals, if applied to the health care system, may undermine the type of health care system that Canadians want for the future.

The CMA's recommendation on the GATS and any trade negotiations, including those related to the FTAA, is:

...That the Federal government undertake extensive consultative sessions with the Canadian public and health care providers. Such a consultation process would help answer questions as to the implications of trade

liberalization and would provide feedback as to what level of trade liberalization in health care services is consistent with Canadian values.

I would hope that all honourable senators can support this position.

#### COMMEMORATION OF THE HOLOCAUST

**Hon. Jeremiah S. Grafstein:** Honourable senators, history never lies; history just takes time to tell the truth. This week commemorates the Shoah, the Holocaust. What should we commemorate? What should we remember? The *Concise Oxford Dictionary* defines the word "remember" as to keep in memory, not to forget; to bring back into one's thoughts, to know by heart. What, then, is the purpose of memory? If history serves lessons, are such lessons really learned?

Two recently published books offer lessons from history that nourish the insidious roots of the Holocaust. The first is a small book that cannot be put aside until finished called simply *Neighbours*, written by Jan T. Gross, a Polish-born professor of politics, now at NYU. This short book is destined to become a classic of Shoah literature. The author retells a concise, chilling story of investigatory history.

One warm summer day in 1941, almost 50 years ago, in the small Polish town of Jedwabne in northeast Poland, half the town's population, 1,600 Christians in number, massacred the other half, 1,600 Jewish men, women and children. Only seven of the Jews of that town, whose families resided side by side as neighbours for centuries, survived. The story was told by these neighbours themselves, in their own words in depositions, remembered still by the locals but forgotten by history until recently.

The German occupation did not compel that massacre. Until the war started in 1939, Christian and Jewish Polish neighbours had by all accounts very cordial relations. Yet one Christian family that hid three Jews who survived was jeered, derided and then driven from the area after the war. The single Jew offered mercy by the townspeople declined; so the Jedwabne Jews were clubbed or drowned, decapitated or dismembered. The remainder, mostly women and children, were herded into a barn, already doused with kerosene, and torched, not by faceless German soldiers but by the people they knew — former schoolmates and neighbours. This happened while the local priest and townspeople stood by and watched the flames and listened to the repeated screams that one said she could never, ever forget.

Last week, on April 19, 2001, the *New York Times* reported a nearly identical massacre took place a month earlier in the nearby Polish town of Radzilow. The *Times* now reports:

The country awaits almost breathlessly, the conclusions of a team of historians, from the Institute of National Remembrance, charged with getting to the bottom of the events in north-east Poland in 1941.

• (1340)

The second book, honourable senators, is entitled *Constantine's Sword*. It is a 700-odd page work by James Carroll, a Catholic scholar and former priest. It chronicles the history of the church and the Jews through the ages.

Carroll recounts the Church's role in the ongoing systemic anti-Semitism. While blunted by the Vatican statements, "Memory, Reflections on the Shoah" and Pope John II's statements on the Holocaust, all of which, according to Carroll, still fall short, the Vatican statement makes no mention of the Inquisition and praises the diplomacy of Pope Pius XII. The Vatican statement places responsibility on the "children of the Church" but not the Church itself. Pope John Paul's visit to the Wailing Wall in Jerusalem was replete with great symbolism. His Holiness said:

The Shoah may yet enable memory to play its necessary part in the process of shaping the future in which the unspeakable iniquity of the Shoah will never again be possible.

Repentance, honourable senators, is more than an individual act. All depends on future conduct. Each of us must ask ourselves whether the deadly virus of anti-Semitism continues to seep through the Catechism —

**The Hon. the Speaker pro tempore:** I regret to interrupt the Honourable Senator Grafstein, but his time has expired.

**Some Hon. Senators:** Continue.

**Senator Grafstein:** Thank you, honourable senators.

**The Hon. the Speaker pro tempore:** I am sorry, but according to our rules, the Honourable Senator Grafstein, you cannot continue.

## ROUTINE PROCEEDINGS

### STUDY ON EMERGING DEVELOPMENTS IN RUSSIA AND UKRAINE

BUDGET—REPORT OF FOREIGN AFFAIRS COMMITTEE PRESENTED

**Hon. Peter A. Stollery,** Chairman of the Standing Senate Committee on Foreign Affairs, presented the following report:

[ Senator Grafstein ]

Wednesday, April 25, 2001

The Standing Senate Committee on Foreign Affairs has the honour to present its

### SECOND REPORT

Your Committee, which was authorized by the Senate on Thursday, March 1, 2001, in accordance with rule 86(1)(h) to examine and report on emerging political, social, economic and security developments in Russia and Ukraine; Canada's policy and interests in the region; and other related matters, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary, and to adjourn from place to place within and outside Canada for the purpose of such study.

Pursuant to Section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

PETER A. STOLLERY  
Chairman

(For text of appendix, see today's Journals of the Senate, Appendix "A", p. 381.)

**The Hon. the Speaker pro tempore:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Stollery, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

### STUDY ON EUROPEAN UNION

BUDGET—REPORT OF FOREIGN AFFAIRS COMMITTEE PRESENTED

**Hon. Peter A. Stollery,** Chairman of the Standing Senate Committee on Foreign Affairs, presented the following report:

Wednesday, April 25, 2001

The Standing Senate Committee on Foreign Affairs has the honour to present its

### THIRD REPORT

Your Committee, which was authorized by the Senate on Thursday, March 1, 2001, in accordance with rule 86(1)(h) to examine and report on the consequences for Canada of the evolving European Union and on other related political, economic and security matters, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary.



Pursuant to Section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

PETER A. STOLLERY  
Chairman

(For text of appendix, see today's Journals of the Senate, Appendix "B", p. 389.)

**The Hon. the Speaker pro tempore:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Stollery, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

#### STUDY ON ISSUES RELATED TO FOREIGN RELATIONS

BUDGET—REPORT OF FOREIGN AFFAIRS  
COMMITTEE PRESENTED

**Hon. Peter A. Stollery,** Chairman of the Standing Senate Committee on Foreign Affairs, presented the following report:

Wednesday, April 25, 2001

The Standing Senate Committee on Foreign Affairs has the honour to present its

#### FOURTH REPORT

Your Committee, which was authorized by the Senate on Thursday, March 1, 2001, in accordance with rule 86(1)(h) to examine such issues as may arise from time to time relating to Foreign relations generally, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary.

Pursuant to Section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

PETER A. STOLLERY  
Chairman

(For text of appendix, see today's Journals of the Senate, Appendix "C", p. 395.)

**The Hon. the Speaker pro tempore:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Stollery, report placed on Orders of the Day for consideration at the next sitting of the Senate.

[Translation]

#### ADJOURNMENT

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That, when the Senate adjourns today, it do stand adjourned until tomorrow, Thursday, April 26, 2001, at 1:30 p.m.

**The Hon. the Speaker pro tempore:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

[English]

#### QUESTION PERIOD

##### HERITAGE

STATE CEREMONIES—CONFLICT BETWEEN PARLIAMENTARY SCHEDULES AND SCHEDULES OF VISITING DIGNITARIES

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, my question is directed to the Leader of the Government in the Senate. It is my understanding that the Minister of Canadian Heritage is the minister responsible for state ceremonies, which includes responsibility for members of the Royal Family to Canada.

Honourable senators are finding, as are our colleagues in the other place, that it is rather difficult this afternoon when both Houses are sitting to have been extended a very generous invitation to meet with His Royal Highness the Prince of Wales at three o'clock. As honourable senators know, in the other place the highly interesting Question Period takes place around 2:15 until three o'clock. As well, I am sure the other place has other business. Of course, we have a full agenda today that I predict we will not finish, even though we will sit until 3:30.

Would the government leader ask her colleague the Minister of Canadian Heritage to give instructions to the state ceremonial branch in the Department of Canadian Heritage that when plans are being made and discussions are going on with the palace, that this kind of very unfortunate circumstance not be repeated?



**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank Senator Kinsella for his question. As I hope senators know, buses will be leaving from outside the Senate door at 3 p.m. and again at 3:15 p.m. to make it possible for those senators who wish to attend the function to do so.

Having said that, senators are also under an obligation to continue to do their work here. Committees will be sitting at 3:30. Obviously, there will be a process that goes on in this chamber, at least one would think, until 3:30 this afternoon, given the nature of the items on the Order Paper.

It is my understanding that the ceremony was planned without invitations being extended to all members of Parliament and senators. The minister insisted that all members of Parliament and senators be invited to attend. Unfortunately, at that time it was too late to actually effect a time change. However, I am pleased to take to the minister the message asking her to establish a blanket order that when activities of this nature take place, it is also possible for members of Parliament to attend without sacrificing their other important duties.

• (1350)

## FINANCE

### POSSIBLE APPEARANCE OF MINISTER ON BILL TO ESTABLISH FINANCIAL CONSUMER AGENCY OF CANADA

**Hon. David Tkachuk:** Honourable senators, yesterday in my speech on Bill C-8, I said that the Minister of Finance would be coming to testify before us. I made that statement because my leadership had informed me that the Liberal leadership had said that the Minister of Finance was coming.

I had not heard anything recently about the minister's appearance so, of course, I went to see the chairman. He had not heard anything about it either. I thought: Well, if the leadership believes he is coming, then we are out of the loop. However, I was looking for assurances because this is an important bill and I had said in my speech that the minister would be attending.

Today I was told that the Parliamentary Secretary would be attending, and I suppose that is fine but I really want the minister to attend. I also want to know how this all happened. This is an important piece of legislation. If the minister makes a decision not to attend, then it cannot be a high priority to him, and therefore, it need not be a high priority of ours. If he is attending, then it is a high priority.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, there was some conflict in the information here. The minister responsible for this bill is not the Minister of Finance. The minister responsible for this bill is the Secretary of State for International Financial Institutions which is the Honourable Jim Peterson. Unfortunately, as many of you know,

Jim Peterson is in recovery from prostate cancer surgery. It is his parliamentary secretary who will be appearing. It is certainly our hope that Minister Peterson will be able to attend when he appears back in the House of Commons.

**Senator Tkachuk:** I would ask the honourable senator then about the bill itself. Who has the power in the bill, the Secretary of State for International Financial Institutions?

**Senator Carstairs:** Honourable senators, my understanding is that the minister introducing the bill is the one responsible for that bill and that is the Honourable Jim Peterson.

## INTERNATIONAL TRADE

### PRINCE EDWARD ISLAND—DISPUTE OVER POTATOES

**Hon. Jack Austin:** Honourable senators, I should like to ask the Leader of the Government in the Senate whether problems in negotiations over P.E.I. potatoes have been resolved? Can exports be expected to resume soon?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I understand that the news media is now reporting that the whole issue has been solved. The Minister of Agriculture certainly hopes that is the case. However, as of this moment, I do not have copies of the letters that were purportedly exchanged between the American government and the Canadian government to hopefully bring this issue to a final and positive end.

## NATIONAL DEFENCE

### REPLACEMENT OF SEA KING HELICOPTERS—SPLITTING OF PROCUREMENT PROCESS

**Hon. J. Michael Forrestall:** Honourable senators, my question is directed to the Leader of the Government in the Senate. First I want to thank her for her raft of delayed replies. However, I suggest that she ask her staff to read carefully the reply that goes in the briefing book, the reply she gives me and the reply that is posted on the Web site. There is gross inaccuracy here with respect to due diligence. I am talking about the delayed answer on the absence of a risk analysis in the splitting of the procurement process. I will let it sit there and the minister can review it.

Turning to my question for the Leader of the Government, I have been told that the following documents were sent forward from the Maritime Helicopter Project Office and were returned for redraft: basic vehicle requirement specification, integrated mission system requirement, requirement specification, and the interface control requirement specification. Apparently, those documents could not be separated into stand-alone documents.

Does the minister have an explanation for this? Is she now prepared to admit that the program to replace the Sea Kings was split for no other reasons than political ones?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not have a specific answer to that very detailed question which Senator Forrestall has put before the chamber. Frankly, the reason for splitting the contract was to make it possible for Canadian companies to participate. With only one contract, there would have been no possibility for Canadian corporations to compete for any of that work in a fair and open bid process because no one company has the capacity to do all of the work.

Splitting the contract in two still does not guarantee that a Canadian company will be accepted, but at least the Canadian companies will have an opportunity to make application to use their skills.

**Senator Forrestall:** Honourable senators, the minister at least has admitted that there is some area of concern. The fact is that splitting the contract was the only way the government could become the prime contractor. No matter what the honourable senator has to say from now on, the written documents simply bear that out.

#### REPLACEMENT OF SEA KING HELICOPTERS—INDEPENDENT LEGAL ADVICE ON DISPUTE BETWEEN EH INDUSTRIES AND GOVERNMENT

**Hon. J. Michael Forrestall:** Can the government leader tell me if the Government of Canada has retained independent legal advice on the recent Federal Court of Appeal decision between EH Industries and the Government of Canada from any former justice of the Federal Court of Appeal or the Supreme Court regarding the Maritime Helicopter Project?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the government did receive independent legal advice and it was indeed from a former justice of the Supreme Court. He was asked whether the process being undertaken was, in his legal judgment, a fair process.

**Senator Forrestall:** Honourable senators, I am not talking about the search and rescue project. I am talking about the Maritime Helicopter Project.

#### PUBLIC WORKS AND GOVERNMENT SERVICES

##### REPLACEMENT OF SEA KING HELICOPTERS— DEPARTURE OF DEPUTY MINISTER

**Hon. J. Michael Forrestall:** Honourable senators, can the Leader of the Government enlighten the chamber as to the reasons for the somewhat premature departure from the

Department of Public Works and Government Services of Deputy Minister Ran Quail. Mr. Quail is a well-known and highly respected public servant, as the minister is aware, who has demonstrated constancy in the right. Was it because he disagreed with the government's policy decision to split the procurement process in the Maritime Helicopter Project, leaving the government — as I have suggested time and time again here — as the prime contractor? Of course, as the prime contractor, the government can do whatever it pleases.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the individual to which the senator refers, Mr. Quail, is a highly respected member of the public service. The honourable senator is correct in that, Mr. Quail remains a highly respected member of the public service, and he has just been charged with conducting a review of the Public Service Commission and its ongoing reform. There is no question that the government has complete confidence in Mr. Quail.

**Senator Forrestall:** Why did you fire him?

**Senator Carstairs:** In terms of the particular question the honourable senator has brought before the house this afternoon, I will find out any additional information I can for the honourable senator.

**Senator Forrestall:** Find it out for the Canadian people and for the men and women who have to fly this equipment.

#### INTERNATIONAL TRADE

##### FREE TRADE AREA OF THE AMERICAS—EXAMINATION OF AGREEMENTS TO ENSURE EQUITABLENESS OF CLAUSES ON CIVIL SOCIETY

**Hon. Douglas Roche:** Honourable senators, my question is directed to the Leader of the Government. Yesterday I asked the minister about the prospects for an ongoing dialogue between civil society groups and the government in the context of the Americas free trade negotiations. The minister said that she found the term "civil society" offensive. Not wanting to use offensive language in the chamber, I went searching for the roots of the term. I found it in the Government of Canada's Web site which says that the term "civil society," which has entered common usage in recent years, refers to all citizen groups outside the state including action groups, volunteer organizations, academics, non-government organizations, non-profit organizations, unions and the business community.

• (1400)

Then the government said on this same Web site that the Government of Canada favours a policy of openness and transparency toward civil society groups and is playing a leading role in the Americas in this respect.



I should like to once more repeat my commendation of the government for funding the people's summit of civil society groups at the Quebec City summit. However, in what manner can an ongoing dialogue between civil society groups and the government in the negotiation process for the Americas agreement be conducted in a non-confrontational atmosphere so that we can be sure that the agreements will indeed contribute to improving human rights, labour standards, health, education and the rights of indigenous peoples in all the countries of the Americas?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank Senator Roche for his question. I do not wish to be repetitious, but I think we are all members of civil society. Frankly, although I may not be an NGO or a member of a particular environmental group, I and others who are outside of those narrow groups also have a right to transparency, openness and dialogue on what is to happen with a future free trade agreement of the Americas. It would be my recommendation to the government, and I think this is where the government wishes to go, that such a discussion take place with the broadest number of Canadians, whether they have put themselves into a specific group or not.

**Senator Roche:** Honourable senators, now the minister and I are absolutely on the same wavelength. I am asking this: In what manner can the government foster such a dialogue so that the broadest section of our society, as represented in the many groups that make up society, can participate in the dialogue process leading to the Americas agreement?

**Senator Carstairs:** Honourable senators, frankly, that dialogue is ongoing and has been ongoing for some time. One of the best vehicles available to any Canadian is that of working through their elected members of Parliament and the senators who sit in this chamber. That is a very effective way of getting the message to the government. However, there are clearly other ways to do it as well. Members of Parliament — indeed, some senators — hold town hall meetings on a regular basis. There are also means of contact directly between various ministries, NGOs and other organizations in this country. I would be very uncomfortable with a formal process that only allowed the government to contact some people in this country about these issues. I think there needs to be the broadest possible dialogue with Canadians.

[Translation]

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have four delayed answers. The first is in response to the question of Senator Robertson, raised on March 27, regarding the privatization of Moncton airport; the second is in response to a question raised by

Senator Roche, on March 20, regarding Official Development Assistance to foreign countries; the third is in response to a question raised by Senator Forrestall, on March 22, regarding the replacement of Sea King helicopters; and the fourth is in response to a question raised by Senator Corbin, on March 22, regarding Russia and the services at the Moscow Embassy.

## TRANSPORT

### PRIVATIZATION OF MONCTON AIRPORT

*(Response to question raised by Hon. Brenda M. Robertson on March 27, 2001)*

Airport authorities (AA) are para-public entities charged with the operation, management and maintenance of federally-owned public facilities. The Moncton Airport Authority has signed a 60-year lease with a 20-year renewal option with the federal government. The Moncton Airport Authority has also signed a management contract with Vancouver Airport Services Limited, a subsidiary company of the Vancouver International Airport Authority, to operate and manage the Moncton Airport.

The government is considering its options with respect to a separate rent policy review and its mandate.

The Greater Moncton Airport Authority will receive the same treatment as all other National Airport System (NAS) Airports. Moncton Airport, like other airports, is free to make whatever interventions it wishes to Transport Canada officials.

## FOREIGN AFFAIRS

### OFFICIAL DEVELOPMENT ASSISTANCE TO FOREIGN COUNTRIES

*(Response to question raised by Hon. Douglas Roche on March 20, 2001)*

I am very pleased to be able to respond more fully to the honourable senator's question of March 20 concerning Official Development Assistance (ODA) to developing countries.

As the senator is aware, the government announced, in its budget statement last year, increases to Canada's ODA budget for three years, including for this year, totalling \$435 million dollars and an additional funding of \$100 million over four year to address global environmental problems in developing countries. This is a significant increase and reflects the importance the government attaches to international development.



Canada, along with other developed countries, is committed to working towards the 0.7 per cent of GNP target that was established by the 1969 *Pearson Report: Partners in Development*, as fiscal conditions permit.

In the first mandate of this government, it was necessary to reduce spending on international assistance, as well as many other important government programs, as part of our efforts to restore economic health to the country and fiscal responsibility to government. In the last few years, as economic and fiscal health was restored, the government increased spending on ODA, but with the strong recovery of the economy, the ODA/GNP ratio decreased.

As the senator pointed out, the Speech from the Throne provided a signal of a return to growth in ODA resources. The government remains committed to moving towards the 0.7 per cent target as conditions permit.

### NATIONAL DEFENCE

#### REPLACEMENT OF SEA KING HELICOPTERS—CONCERNS OF AEROSPACE INDUSTRIES ASSOCIATION OF CANADA

*(Response to question raised by Hon. J. Michael Forrestall on March 22, 2001)*

The government has developed a procurement strategy for the Maritime Helicopter Project that will ensure the Canadian Forces acquire the equipment it really needs at the lowest possible price for Canadians. Concerning the responsibilities of the prime contractors, the letter of interest released by the government in August 2000 states that the contractor of the mission system will be responsible for modifying the helicopter selected by the government to produce a fully integrated maritime helicopter. That said, it will be essential that the prime contractors for both the basic vehicle and the mission system cooperate in the integration of the two procurement contracts, and interface agreements will be established to this effect between the prime contractors to formalize this arrangement.

### FOREIGN AFFAIRS

#### RUSSIA—SERVICES AT MOSCOW EMBASSY

**Hon. Eymard G. Corbin:** Honourable senators, as provided by the rules, could I ask the Deputy Leader of the Government to give me the answer verbally?

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, as Senator Corbin has asked, this is the answer:

Due to privacy laws, the details of individual cases cannot be publicly discussed. Visa officers in the Moscow office offer competent, quality service under sometimes trying circumstances, serving a large geographic area.

The visa section in Moscow is currently the only office providing visa services for a very large territory, namely, Russia, Armenia, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan.

Our Moscow office has a significant workload. The number of visitor applications received has increased from 14,433 in 1997 to 15,906 in 2000. Immigrant applications rose from 2,459 in 1997 to 3,242 in 2000.

Another very complicating factor is complex case processing due to potential fraud. For instance, in January and

February 2001, our Moscow office quality controlled the documents submitted by applicants and found that 28 per cent were fraudulent.

Five support staff have been hired for years 2000/2001. For years 2001/2002, we have also assigned an extra Canadian officer, plus five support staff to offer even better service to clients.

A temporary annex to the embassy is under construction, until a new permanent building is built. This extra space will provide a better quality of service to our clients (waiting room, et cetera). Given that Russia is a highly populated country, a new visa office in St. Petersburg will open in August 2001, with one Canadian officer and two support staff. The new office will alleviate some of Moscow's workload.

### RESPONSE TO ORDER PAPER QUESTION TABLED

#### HERITAGE—CANADA MILLENNIUM SCHOLARSHIP FOUNDATION

**Hon. Fernand Robichaud (Deputy Leader of the Government):** I tabled the response to Question No. 12 on the Order Paper, by Senator Lynch-Staunton.

### ORDERS OF THE DAY

#### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, we would like to start with Item No. 4, namely second reading of Bill C-8, then revert to Orders of the Day as they stand, namely Items Nos. 1, 2, 3 and 5.

[English]

## FINANCIAL CONSUMER AGENCY OF CANADA BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Rompkey, P.C., for the second reading of Bill C-8, to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions.

**Hon. W. David Angus:** Honourable senators, I should like to add a few words to those spoken yesterday by Senators Tkachuk, Oliver and Bolduc on Bill C-8, the so-called revised financial reform legislation, before it goes on committee. This bill, by the way, is colloquially referred to as "Paul Martin's legislation" or "Paul Martin's financial services legislation."

Whilst I grudgingly approve of this bill in principle, I am perplexed, indeed troubled, by this massive, complex and disjointed tome of proposed legislation and the awkward situation in which I believe it places us all with respect to our capacity as legislators. I submit that we may be faced here with a veritable Hobson's choice whereby we will be damned if we do and damned if we do not pass Bill C-8.

I say this, honourable senators, because the bill appears to be substantially flawed in many respects, even though it does indeed contain a number of sound and key provisions that are urgently needed and anxiously awaited by many Canadians, particularly those engaged in the financial services sector. This sector has experienced a sustained period of turbulence characterized by vastly increased competition, rapid and fundamental change, and the advent of new paradigms in financial markets around the world.

This legislation, in essentially identical terms except for several hundred technical changes, was before the last Parliament as Bill C-38. It was introduced following a long and arduous revision process spanning some five or more years. Bill C-38 died on the Order Paper when Parliament was prematurely dissolved for last year's election, having undergone only a *de minimis* amount of parliamentary scrutiny and none here in the Senate. A number of financial service sector observers are now wondering out loud whether this legislation has been so long in coming that it is no longer relevant to a globalized and borderless marketplace. I am asking the same question myself.

• (1410)

Honourable senators, the point is that this bill needs and deserves a focused and thorough study by the Senate's Banking Committee to address, *inter alia*, those concerns mentioned yesterday by Senator Tkachuk, Senator Oliver and Senator Bolduc, together with those that I will outline in a moment and those that I know many witnesses will be describing to the committee when the bill goes there. Should we forego such a study or simply go through the motions in a cursory way, I submit we would be seriously remiss in our duty to Canadians.

The basic questions we must ask ourselves are twofold. First can constructive, useful and practical amendments be developed within a reasonable time frame, say six weeks, beyond which further delay will, we are told, cause serious prejudice to major transactions currently on the drawing boards, and/or diminish or obliterate any potential benefits to be derived from such amendments? Second, is the bill in its present form beyond remediation such that we should pass it as drafted for its good points and hope this government will come back to us soon perhaps in September, with a new, better, more relevant and effective package of financial reform legislation?

I am personally hopeful that serious and concentrated study in committee can and will produce a positive result in the short term.

My primordial concern about Bill C-8 is its total lack of strategic vision. When introduced in the other place on February 7, Bill C-8 was trumpeted by the government — and might say again to the Leader of the Government in the Senate that the press release issued that day was a joint one from the Secretary of State for International Financial Institutions and the Minister of Finance — as being legislation "designed to create new policy framework for Canada's financial services sector which includes domestic and foreign banks, trust companies, insurance companies, credit unions and other financial institutions."

I respectfully submit, honourable senators, that as so-called "framework legislation" this bill is sorely wanting. Simply put, it is totally devoid of any coherent vision or far-sightedness and fails miserably to establish a modern, contemporary and workable blueprint for Canada's financial services industry evolving in a manner that is compatible with what we see happening in the financial sectors of our major trading partners. Instead of boldly unshackling Canada's financial institutions and those foreign entities which choose to operate here from burdensome and outdated regulatory restrictions to enable them to compete more freely in today's global environment, as recommended in most of the studies that preceded Bill C-3, Bill C-8 at best takes only a timid step forward.



Just when the Canadian government should be going the extra mile with inspired and creative legislation designed strategically to preserve the once renowned high quality of our banking and life insurance industries, and to nurture and help our major players compete and flourish in the global marketplace, it has instead come up with an intimidating hodgepodge of 900 pages of technical ad hoc measures and enabling provisions that will lead to increased rather than reduced rule by regulation. The bill also proposes the creation of costly and unnecessary bureaucratic agencies in the name of social policy and alleged consumer protection.

This is all very disappointing, in that the MacKay Task Force on the Future of the Financial Services Sector in Canada reported in the fall of 1998 and provided the government with a well thought out, long-term visionary plan for the financial services sector. The MacKay report was supplemented by thoughtful and approving reports from the Senate Banking Committee. Rather than adopt MacKay's visionary, integrated and well-balanced plan as such, the government appears to have "cherry-picked" certain politically attractive but often unrelated measures or recommendations, thus destroying the balance, the cohesiveness and the potential benefits of the MacKay vision.

The result has been poor indeed, honourable senators. In Bill C-8 the government has missed an enormous opportunity to create a comprehensive and balanced framework that would enable Canadian financial institutions to thrive in the new environment — to expand, to innovate and to generate real benefits for all Canadians, especially those who consume financial service products.

Quite frankly, honourable senators, the members of the Banking Committee were dismayed and disappointed, as were members on both sides of this chamber, at the evident lack of a bold and visionary plan for the future of Canada's financial services industry when Bill C-38 was introduced on June 13, 2000. The committee's chairman, Senator Leo Kolber, echoed these sentiments when he took the unusual step of publicly criticizing his government's proposed legislation.

**Some Hon. Senators:** Hear hear!

**Senator Angus:** A great Canadian, I might add.

Shortly after its introduction, honourable senators, in a most candid speech to the Canadian Bankers' Association in Montreal on June 19, 2000, Senator Kolber's remarks were chronicled in the national press, in particular in the *National Post* of June 22, 2000. The article stated:

Leo Kolber, a senior Liberal and Chairman of the Senate Banking Committee, has slammed the federal government's new financial services legislation, saying it could prevent Canada's banks from becoming competitive at the global stage.

**Some Hon. Senators:** Oh, oh.

**Senator Angus:** Honourable senators, we have driven Senator Kolber from the chamber in embarrassment. The article continues:

The new bill will deter bank mergers and is inadequate in setting out a broad vision or blueprint for the unfolding financial services industry, he told a meeting of bankers earlier this week.

In addition to criticisms about the general bill, he also raised concerns about specific policy decisions such as denying the banks the right to retail insurance in their branches... He raised the issue of vision for the industry by asking if Canada wanted to have a "national champion" policy in which large institutions carry the Canadian flag in the global marketplace. He also raised concerns about the Senate being cut out of the Merger Review Process the new legislation outlined. Under the new bill, any big bank merger will need to be reviewed by the House of Commons Finance Committee to determine if the merger is in the public interest. However, the Senate Banking Committee is left out of the review process. "That's not really acceptable and I will have a lot of trouble dealing with that," Senator Kolber said. "If they are going to politicize mergers by bringing it into the political arena (the House of Commons Finance Committee) we, the Senate Banking Committee, sure as hell are part of the political arena," he said.

Honourable senators, what can I say? Our colleague, Leo Kolber, our dear colleague, our wonderful, astute, intelligent Chairman Kolber, has already accomplished at least one thing with those remarks, for on February 2, 2001, the Minister of Finance, that same Paul Martin, wrote a letter to Senator Kolber, in which he said:

...I wish to inform you that the Merger Review Guidelines will be amended to provide an explicit role for the Senate Banking Committee. Specifically the Banking Committee will be asked to conduct public hearings into the broad public interest issues raised by a merger proposal, as part of the examination phase of the review process and to report to the Minister of Finance.

• (1140)

Honourable senators, the Finance Minister was as good as his word, as he always is, for the merger review guidelines which accompanied Bill C-8 when it was introduced on February 7, 2001 contained a specific provision setting up the promised role for the Banking Committee.

I should like to add my congratulations to Senator Kolber, who is sitting over there behind the curtains, to those of Senator Tkachuk of yesterday afternoon. The other criticisms of the legislation articulated by Senator Kolber are valid and I support them wholeheartedly. Honourable senators, I believe we should all support them, because they are valid criticisms.



Honourable senators, the challenge for us is to further improve the bill when it is referred to the Banking Committee, hopefully, this afternoon. I will be carefully examining the verbal and written submissions we receive at our hearings, and I will be actively seeking constructive ways and means to improve Bill C-8. I trust we can count on all senators to support this important and urgent process.

A few examples of the specific concerns which I respectfully suggest should be addressed in the committee are as follows: First, the government is either in favour of bank mergers or it is not. This legislation is unnecessarily and perhaps unfairly ambiguous on the subject, to say the least. Whereas, on the one hand, Bill C-8 appears to recognize mergers of banks and other financial institutions as legitimate business initiatives, on the other hand, the process for review appears to be so onerous and political that the result may actually inhibit mergers. The proposed regime falls far short of what is taking place today in the U.S. under the Gramm-Leach-Bliley Act, and in other jurisdictions that we consider to be our most friendly trading partners.

Second, Bill C-8 appears to not permit large bank and large insurance company mergers. Is this the correct policy for Canada? I do not know. It runs counter to current global trends, though, as evidenced by the Citicorp-Travelers deal in the U.S. and the Allianz-Dresdner deal in Germany. While I recognize that Senator Bolduc does not wish to follow the German model, we must ask these questions to see if we are on the right track.

Third, counter to the MacKay report recommendations, Bill C-8 does not provide new business powers for banks, such as the right to sell property and casualty and other insurance products such as annuities in their branches or to engage in auto leasing. The bill does, however, impose costly burdens on the banks in the name of consumer protection. Under MacKay, such social burdens were supposed to be a quid pro quo for the said new powers. Why has this balance been taken away? I think we deserve an answer.

Fourth, under Bill C-8, there is the potential for extensive legislation by regulation, something that I think is anathema to us all. This creates uncertainty in the financial services area, an area where certainty or clarity is critical. This should be questioned. In like manner, the bill provides for excessive ministerial discretion and involvement. This will inevitably lead to slower and more complicated approvals in a world where transactions are, perforce, happening at an increasingly more rapid pace. Here again, the proposed Canadian model appears to be totally out of sync with those of our trading partners. For this and many other reasons, it is particularly important that the Minister of Finance, the Honourable Paul Martin, appear before the Banking Committee to answer questions and provide such explanations as are clearly appropriate in the circumstances.

**The Hon. the Speaker *pro tempore*:** Order!

The time for the Honourable Senator Angus to speak has expired.

**Senator Angus:** I would ask for leave to continue.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

**Senator Cools:** I hope we give Senator Kolber even more time, too.

**Senator Angus:** Honourable senators, fifth, Bill C-8 would seem to discourage foreign banks from getting more involved in retail business in Canada. Is this what we want? It is not what the various studies found. We need to question why foreign institutions wishing to do business in Canada would be subjected to restrictions they do not have in their own jurisdictions and harder restrictions than those they will be asked to compete with will be facing.

Sixth, provisions or mechanisms are contained in Bill C-8 which may well result in or perpetuate a non-level playing field as between regulated and unregulated institutions which, in the normal course, will be in competition with each other. Even under the proposed holding company structure, there appears to be a need for more flexible powers for regulated institutions in Canada competing with non-regulated ones, particularly non-Canadian non-regulated institutions. This, too, should be looked into.

Seventh, and finally, there is a clear need for a streamlining of the legislative process and procedures in areas where both OSFI, the Office of the Superintendent of Financial Institutions, and ministerial involvement and approval are required in a parallel way. As it is set up now, it is absolutely cumbersome. There needs to be a streamlining of this process.

Honourable senators, I hope these comments have sensitized you in some small way to the issues and important questions facing us with Bill C-8. Hopefully, the legislation will now go to committee and receive the attention and study it deserves.

In this spirit, I would expect that the Minister of Finance, the Honourable Paul Martin, will be among the very first witnesses to appear.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I take it that the Honourable Senator Angus, who is also a member of the Standing Senate Committee on Banking, Trade and Commerce, would like the Minister of Finance, Paul Martin, to appear before the Banking Committee when it examines this bill, which encompasses only 911 pages. I take note that the House of Commons received the bill in early February and it was adopted on April 2.

I would submit that, when the bill is referred to our Banking Committee, the committee be given sufficient time to examine this important draft legislation.

My first question to Senator Angus is whether he noticed that there are several references to not only the Minister of Finance in the bill, but also, for example, in clause 955 on page 343 of the bill, to the Deputy Minister of Finance who is given authorization. Clearly, the Minister of Finance would have to be available to the committee so that we may determine the authority that will be given to his deputy.

Does Senator Angus have any assurance from the chairman of the committee that the Minister of Finance will be called to testify?

**Senator Angus:** Honourable senators, we are told that the deputy minister will come to the first hearing, but that is the extent of the assurance we have been given.

**Hon. David Tkachuk:** Honourable senators, since I rarely see Senator Angus I will take this opportunity to ask a question. Honourable senators will no doubt note he takes as well as he gives.

I was present when Senator Kolber expressed his views on Bill C-38, which is now Bill C-8. I enjoyed that speech. The next morning, my office phoned Senator Kolber's office and requested a copy of the speech. Surprisingly, and to my dismay, no copies were available because Senator Kolber had given them all to the members of the media who had attended the meeting. I am now curious as to whether Senator Angus was fortunate enough to obtain a copy of that speech.

**Senator Angus:** I must admit that my good fortune ran out. It was on its way to me in a sealed envelope, I am told, when a messenger from the minister's office intercepted it, and I was told that all copies were then destroyed. This would have been on or about June 24, 2000.

### VISITORS IN THE GALLERY

**The Hon. the Speaker *pro tempore*:** Honourable senators, before continuing the debate, I should draw the attention of honourable senators to the presence in the gallery of the recipients of the Governor General's Caring Canadian Award.

[Translation]

• (1430)

They received this award this morning from Her Excellency the Governor General during a ceremony held at Rideau Hall. The Governor General's Caring Canadian Award honours the unsung heroes of our country who so generously give of their time and energy to help others.

[English]

On behalf of all senators, I thank you for your caring work. I welcome you to the Senate of Canada.

**Hon. Senators:** Hear, hear!

### FINANCIAL CONSUMER AGENCY OF CANADA BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Rompkey, P.C., for the second reading of Bill C-8, to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, it is clear from the situation in which the opposition finds itself with this bill that the Minister of Finance must be available to the committee for its examination of the bill. I am reticent about taking the adjournment of the debate. Can the Leader of the Government in the Senate advise whether the Minister of Finance will appear before the committee?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I cannot guarantee that the Minister of Finance will be at a meeting that I understand has been called for tomorrow. I understand that the Deputy Minister of Finance will be there, as will the Parliamentary Secretary.

I must clarify something I said earlier today. Secretaries of State do not have parliamentary secretaries. Thus, Mr. Roy Cullen, the Parliamentary Secretary to the Minister of Finance, will attend.

I shall undertake personally to do everything I can to ensure as soon as possible in the study being undertaken by the Banking Committee the appearance of the Minister of Finance.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, perhaps between now and tomorrow the Leader of the Government could inform us whether the minister is available. Meanwhile, I wish to adjourn the debate.

On motion of Senator Lynch-Staunton, debate adjourned.



[Translation]

## FEDERAL LAW-CIVIL LAW HARMONIZATION BILL

THIRD READING—MOTIONS IN AMENDMENT—  
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator De Bané, P.C., seconded by the Honourable Senator Poulin, for the third reading of Bill S-4, A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law.

And on the motion in amendment of the Honourable Senator Grafstein, seconded by the Honourable Senator Joyal, P.C., that the Bill be not now read a third time but that it be amended,

(a) on page 1, by deleting the preamble; and

(b) in the English version of the enacting clause, on page 2, by replacing line 1 with the following:

“Her Majesty, by and,”

And on the motion in amendment of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Moore, that the Bill be not now read a third time but that it be amended in the preamble, on page 1, by replacing lines 5 to 7 with the following:

“Province of Quebec finds its principal expression in the *Civil Code of Québec*.”

**Hon. Pierre Claude Nolin:** Honourable senators, I rise today to speak against the amendments moved by Senators Grafstein and Joyal and strongly support Bill S-4.

To start with, Senator Grafstein is proposing that the preamble of Bill S-4 be deleted. To convince us of merit of his amendment, he said on April 4, and I quote:

Based on the testimony before the committee, as amplified by the debate yesterday in this chamber, (i.e. April 3, 2001) the preamble is unclear, unintelligible in parts, and inconsistent with the essence of the legislation.

In this connection, he voiced reservations on the validity of Parts 1, 2 and 5 of the preamble or declaration of principle contained in this legislation.

Senator Joyal goes on to propose an amendment aimed at eliminating any reference to the unique character of Quebec and

to Quebec society from the wording of the second whereas in the preamble.

Honourable senators, I should like to start by reminding Senator Grafstein that not all those who came before the committee criticized the declaration in principle contained in the preamble to Bill S-4. On the contrary, the only ones opposed to the second whereas were Professors Max Nemni of Laval University and Michael Behiels of the University of Ottawa.

Senator Grafstein reminded us of the importance each word in legislation. Being a lawyer myself by training, I cannot disagree with him on that. On April 4, he made the following statement:

Because this legal bill, as it applies to federal legislation, will have a day-to-day impact on ordinary life affecting every resident and citizen of the province of Quebec. We have a higher duty to be satisfied that legal legislation, as opposed to policy legislation, is precise because every word counts.

Honourable senators, this principle also applies to the respective speeches by Senators Grafstein and Joyal. Every word counts. As a Senator for Quebec, I have a duty to ensure that the legislation we enact does not threaten the fundamental rights of Quebecers and their specific interests. The mandate of the Senate is to defend the interests of every region of Canada, and that is what I propose to do again today.

As I have said, Senator Grafstein used the terms “unclear”, “unintelligible” and “inconsistent.” These were translated as “incompatible,” “inintelligible” and “manque de clarté.”

In order to better grasp the reasoning used by my colleague in his speech following introduction of his amendment, I consulted the *Oxford English Dictionary* in order to find the precise meaning of each of these terms.

[English]

“Inconsistent” means not consistent, not agreeing in substance, spirit or form, not in accordance, incompatible, incongruous, self-contradictory.

“Unintelligible” means incapable of being understood.

“Unclear” means not clear or distinct, not easy to understand, obscure, uncertain.

[Translation]

Honourable senators, having said that, I will divide my speech into three parts. First, I will refute the arguments advanced by Senator Grafstein and show that the preamble to Bill S-4 is clear, intelligible and consistent with these provisions. I will also address the concerns raised by Senator Joyal when I examine the preamble’s second whereas.



Next, I will discuss the validity of the resolution passed by the Senate in December 1995 recognizing the people of Quebec as a distinct society. Finally, I will present a real-life example, which will show beyond all doubt the complementarity of federal law with the Civil Code of Quebec.

Before going any further, I wish to point out that throughout my speech I will be referring to the French-language version of Bill S-4. I would politely remind you that, under section 18 of the Constitution Act, 1982, the statutes of Canada are printed and published in French and in English, both language versions being equally authoritative.

As for the preamble, honourable senators, I believe that it is important to place the preamble's declaration of principle in the context of this historic legislation. Its primary purpose is to harmonize federal law with the civil law of Quebec and to amend several federal acts to ensure that each language version takes the common law and the civil law equally into account, nothing more.

I wish to congratulate the Minister of Justice for seizing the opportunity to take advantage of the tabling of this harmonization bill to set out and better explain the characteristics of Canadian bijuralism by means of the preamble.

The first whereas of the bill's preamble provides that:

...all Canadians are entitled to access to federal legislation in keeping with the common law and civil law traditions.

First, Senator Grafstein wonders about the meaning of the expression "access to federal legislation."

• (1440)

In his opinion, this expression is not clear and is meaningless. In order to better understand the meaning of that expression, we must look at the term "accès." In the context of Bill S-4, the *Petit Robert de la langue française* defines that term as the "possibilité de connaître, de participer." Contrary to what Senator Grafstein seems to think, there is no reference to the notion of physical access to the legislation. Rather, the first whereas in Bill S-4 is based on the principle that follows.

A number of federal acts currently include private law notions that are not clearly defined. In that context, the civil law is used in Quebec by the courts and by the public to interpret certain provisions of federal acts. We are alluding here to the concept of suppletive law. Later on in my speech, I will explain what it means. Since these acts do not take into account the new provisions found in the 1994 Quebec Civil Code, access to federal legislation is thus jeopardized for Quebecers.

The harmonization process proposed in Bill S-4 seeks to correct that situation. I must point out to Senator Grafstein that

the harmonization of federal acts with the common law was achieved several years ago already.

Given that context, the first whereas is very important. As shown by the evidence given by Department of Justice officials during committee proceedings, the purpose of Bill S-4 was to guarantee to all Canadians equal access to a federal legislation that reflects both the civil law and common law traditions.

However, the Department expects additional measures will be taken following passage of this legislation, to better guarantee Quebecers' access to federal legislation by making reference to private law notions. Alain Bisson, General Counsel at the Civil Code section of the Department of Justice, told the committee that his department will propose the creation of a special Internet site that will provide, free of charge, a specialized glossary of Civil Code and common law terms. This glossary will be translated in both official languages and will include over 200 terms that will be harmonized through Bill S-4.

Honourable senators, there is no doubt that these initiatives will increase the knowledge and participation of Quebecers in Canadian bijuralism.

Second, Senator Grafstein says that the word "Canadians" in the first whereas of the preamble excludes people who do not have Canadian citizenship. This would thus be contrary to the Canadian Charter of Rights and Freedoms and, consequently, unconstitutional. According to my colleague's reasoning, a judge could say that, if someone is a Canadian national, he can be covered by from the provisions of the Civil Code, but if he is a landed immigrant, a refugee or an Aboriginal, it is a totally different story.

I want to remind Senator Grafstein that Quebec's Civil Code, as well as the common law, are subject to the Canadian Charter of Rights and Freedoms. Even though the code applies only to Quebec, it is no exception to the rule. Furthermore, the preamble of Bill S-4 is no pioneer in terms of the Canadian citizenship concept, residency requirements or Aboriginal rights. It does not create any new right. When a judge or a lawyer has doubts about the interpretation of a word in legislation, what does he or she do? Like most people, he or she refers to the dictionary. Thus, the *Petit Robert* defines "Canadiens" as "du Canada, les habitants du Canada." So it would be very surprising if a judge were to refer only to the preamble of Bill S-4 to say that using the expression "all Canadians" makes the rest of the preamble and the legislative provisions unconstitutional.

In this regard, Jean-François Gaudreault-Desbiens, a professor at the Faculty of Law of McGill University, in Montreal, said, in his evidence before the committee:

We also have to know that the preamble of a law has no normative scope and grants no new individual or collective right. In a way, it is a simple statement.

Let us move on now to the arguments raised by Senators Grafstein and Joyal in opposition to the text of the second whereas of the preamble. It reads as follows:

...the civil law tradition of the Province of Quebec, which finds its principal expression in the Civil Code of Quebec, reflects the unique character of Quebec society;

Honourable senators, it is not my intention to discuss the history of the tradition of civil law in Quebec or the concept of distinct society. A number of you have already done so in the past few weeks. Essentially, the arguments used by Senators Grafstein and Joyal to criticize the inclusion of the second whereas of the preamble may be summarized in three points. First, the use of the expressions "unique character" and "Quebec society" make this clause a threat to Canadian unity, since these words, powerful in the political arena, have been taken up by the Quebec sovereignist movement. Second, mere reference to Quebec's unique character arising from its Civil Code gives the impression that the Quebec tradition in civil law is superior to the tradition in the rest of Canada.

Third, the inclusion of this whereas spoils the federal government's harmonization objective of Bill S-4, because the legislator wants to introduce a highly political concept into the preamble of federal legislation. To do so is incompatible with the provisions of Bill S-4.

Honourable senators, before I respond to their arguments, I should like once again to define the terms that seem to pose a problem in the eyes of my two colleagues. According to the *Petit Robert*, the word "caractère" means "trait propre à une personne, à une chose, et qui permet de la distinguer d'une autre, élément propre qui permet de reconnaître, de juger." The word "unique" means, again according to the *Petit Robert*, "qui est le seul dans son espèce ou qui dans son espèce présente des caractères qu'aucun autre ne possède, qui n'a pas son semblable." The definition provided by the *Petit Robert* is much more subtle and in keeping with the objectives of Bill S-4 than that used yesterday by Senator Joyal.

In order to have a proper understanding of the use of these words in the second whereas in the preamble, it is important, I believe, to once again remind ourselves that they need to be interpreted within the context of the preamble and the provisions of the bill.

As the honourable senators are already aware, the 1994 Quebec Civil Code constitutes a structured legislative whole. Its role is to establish rules that can be adapted to the diversity of human and social situations and to integrate scientific or social developments.

Thus when the second whereas in the preamble states that the civil law tradition of the Province of Quebec finds its principal expression in the *Civil Code of Quebec*, it confirms the existence of a reality that was present long before 1994. In fact, as long ago as 1866, the Civil Code of Lower Canada became the legal standard in this province of the colonies of British North America as far as civil proceedings were concerned. Its provisions were in line with the provisions of the 1804 French Civil Code.

**The Hon. the Speaker pro tempore:** I regret to advise that Senator Nolin's time has expired. Does he wish leave to continue?

**Senator Nolin:** Yes.

**The Hon. the Speaker pro tempore:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Nolin:** A year later, the coming into effect of subsection 92.13 of the Constitution Act, 1867 confirmed that property and civil rights were a provincial area of jurisdiction.

● (1450)

The point of including this provision was so that the Government of Quebec could fully enforce the provisions of the former Civil Code, the 1866 version, in its territory.

Since 1867, the practice of civil law in Quebec has continued to evolve. In 1955, the Government of Quebec of the day began a reform of the 1866 Civil Code, by passing the *Loi sur la révision du Code civil*. Subsequently, an administrative structure was gradually put in place to carry out this project. In 1980, after several years of consultations, the National Assembly of Quebec passed a reform of the book on family law. Later, a number of other amendments were made to the Civil Code books on persons, successions, property, and arbitration. Between 1986 and 1988, other projects to amend certain provisions of the code made clear the importance of reviewing the code in its entirety so that it would reflect the values of contemporary Quebec society.

Thus it was that, in 1990, Quebec's former justice minister, Gil Rémillard, introduced a bill to reform the Civil Code of Lower Canada. On December 18, 1991, after several months of consultations, the National Assembly passed the new *Civil Code of Quebec*. This code took effect in 1994. As Gil Rémillard said in the introduction to the book entitled *Commentaires du ministre, le Code civil du Québec, Un mouvement de société*:



The purpose of the reform of the Civil Code was to convey, at the dawn of the 21st century, the profound changes that have taken place in Quebec society with respect to social and family relationship, values, knowledge, the economic context, and the new perspective of human relationships in society since the adoption in 1866 of the Civil Code of Lower Canada, and to bring the legislation into line with the present reality. But this reform does not abandon the previous legislation: it extends, improves and consolidates it.

Honourable senators, I believe that the long process of over 35 years undertaken by the Quebec government to reform the Civil Code clearly reflects the importance of that code in Quebec society.

In that sense, the use of the expression "unique character" makes reference to the civil law tradition that exists in Quebec and that is unique in Canada and in North America.

This specific situation is not only acknowledged in subsection 92.13 of the Constitution Act, 1867, but also in section 94 of the same act. That section provides that Parliament may adopt measures to ensure the uniformity of all the laws or parts of laws relating to property and civil rights in the other Canadian provinces.

Honourable senators, it is in this context that we must interpret the second whereas in the preamble of Bill S-4. Contrary to what Senator Joyal said yesterday, even though the expression "unique character" comes from the Calgary declaration, it does not seek to indirectly recognize Quebec's distinct character. The third paragraph of that declaration recognized that, in Canada's federal system, the unique character of Quebec society includes its French-speaking majority, its culture and its tradition of civil law. This is fundamental to the well-being of Canada.

If we read the second whereas carefully, we can see that there is absolutely no question of recognizing Quebec's unique character on the basis of its French speaking-majority or its culture. The only reference made in Bill S-4 is to the civil law tradition.

The Civil Code is only in effect in Quebec. The term "unique" does not give precedence to Quebec's civil law over the common law. Therefore, the preamble merely acknowledges the particular legal status of the Province of Quebec.

If my two colleagues are still not convinced that the second whereas in the preamble does not give precedence to Quebec's civil law tradition, they should know that clause 8 of Bill S-4 seeks to amend the Interpretation Act to state that, and I quote:

Both the common law and the civil law are equally authoritative and recognized sources of the law of property and civil rights in Canada.

When she testified before the committee, on March 14, the Minister of Justice, Anne McLellan, agreed with that interpretation. She said, and I quote:

[English]

What is it that is different and unique in terms of the Province of Quebec in relation to other jurisdictions? We have all been taught from our first law school class, wherever we went to law school, that one of the things that makes Quebec unique is its civil law tradition, primarily expressed in the code. Every law student in this country has been taught that for a long time.

[Translation]

Later on, the minister stated, and again I quote:

[English]

However, I believe that the second paragraph of the preamble reflects that which is self-evident.

[Translation]

This explanation does not appear to have reassured Senator Joyal. According to him, "Quebec society" coupled with the concept of unique character poses a danger to Canadian unity. In order to convince us, he does not hesitate to refer to the terms "distinct society," "people" and "nation" in speaking of the second whereas of the preamble to Bill S-4. Yet these words appear nowhere in the statement of principle or in the law.

I agree with Senator Joyal in saying that the term "society" in the context that concerns us is not neutral. However, it is much less powerful than the word "people," which appears in the first paragraph of the resolution passed by the Senate in 1995 in recognition of Quebec's distinct society.

Let us see how the *Petit Robert* defines these two words. "Society" or "société" means:

[French]

Ensemble des individus entre lesquels existent des rapports durables et organisés, le plus souvent établis en institution et garantis par des sanctions; milieu humain par rapport aux individus, ensemble des forces du milieu agissant sur les individus.

[Translation]

"People" or "peuple" means:

[French]

Ensemble d'êtres humains vivant en société, habitant un territoire défini et ayant en commun un certain nombre de coutumes, d'institutions. Ensemble des personnes, des citoyens qui constituent une communauté.



[Translation]

Although at first glance these two terms appear more or less identical, it is clear that the meaning of the word "society" is much less politically charged than that of "people," since there is no reference to the concepts of territoriality, mores, institutions and communities.

It is therefore wrong to believe that the second whereas of the preamble extends beyond the framework of Bill S-4, as Senator Joyal is claiming. It does not involve a constitutional resolution intended to officially recognize the distinct nature of Quebec or the existence of a Quebec people. It does not open the door to including an interpretative clause on the distinct character of Quebec in the Constitution. The concept of "unique character" in the preamble of Bill S-4 gives no new powers to Quebec and, finally, does not recognize any right of this province to self-determination.

As Jean-François Gaudreault-DesBiens put it before the committee, and I quote:

... by applying normal rules of interpretation, a judge could not extend the meaning to the second whereas clause of the preamble to the point of seeing a recognition of any nation or people. In addition, this whereas clause must be placed in the context of the entire preamble. ... Essentially, we are talking about the harmonization of two legal traditions in the framework of the development of federal laws.

• (1500)

This statement was supported in committee by Yves de Montigny, a lawyer with the Department of Justice. In response to a question from Senator Joyal, he replied as follows:

[English]

If a court were to refer to this preamble, as I said previously, they would refer to it as a whole and not only to this particular "whereas" clause. If we were to imply from this preamble anything more than a statement of fact, and if it concerned the status of Quebec as you have stated, then I think the court would pay attention to the fact that both the Meech Lake accord and the Charlottetown accord would not be enshrined in the Constitution. That is of much more relevance and weight than this preamble, which is innocuous in this respect.

[Translation]

Clause 13 of the Interpretation Act, I would remind honourable senators, stipulates that the preamble of an enactment is to be used only to interpret its provisions in case of ambiguity.

[ Senator Nolin ]

Honourable senators, the late lamented former Prime Minister of Canada, Pierre Elliott Trudeau, would probably not have been opposed to the second whereas in Bill S-4. Here is the reason why.

[English]

In *Meech Lake: Conflicting Views of the 1987 Constitutional Accord*, he wrote:

Of course Quebec is a distinct society with its own language and its civil law, which it has a right under section 92.13... Nobody would probably even deny that; if you want, we can put it into a preamble somewhere.

[Translation]

I would remind honourable senators that Bill S-4 is not a bill that is constitutional in character, far from it! Honourable senators, it is clear from this statement that the Right Honourable Pierre Elliott Trudeau did not, in 1989, share the concerns of Senators Grafstein and Joyal on the recognition of Quebec as a distinct society in the preamble to the Canadian Constitution.

In *Ford*, the Supreme Court referred to Canadian duality and to unique character. Without necessarily using those terms, it recognized under section 1 of the Canadian Charter of Rights and Freedoms that, given the demographic situation and the French fact in North America, the predominant use of French in advertising was legitimate. Paragraph 73 of the judgment states as follows:

...the aim of the language policy underlying the Charter of the French Language was a serious and legitimate one. They indicate the concern about the survival of the French language and the perceived need for an adequate legislative response to the problem. Moreover, they (the Quebec documents) indicate a rational connection between protecting the French language and assuring that the reality of Quebec society is communicated through the "visage linguistique."

Whether Senators Grafstein and Joyal like it or not, the highest court in the land did not hesitate to use the expression "Quebec society."

In 1996, the late Brian Dickson, former Chief Justice of the Supreme Court of Canada, took a stand on the concept of Quebec's distinct character. At a conference organized by the Military and Hospitaller Order of Saint Lazarus of Jerusalem, Grand Priory of Canada, in Winnipeg, he said:

I should say right from the start that I am very comfortable with this concept. The courts are already interpreting the Charter and the Constitution with an eye to the distinctive role of Quebec in protecting and promoting its French-speaking character. In practice, therefore, enshrining formal recognition of the distinct character of Quebec in the Constitution would not be a great departure from what our courts are already doing.

In 1997 the second red book of the Liberal Party of Canada said that a Liberal government would work towards the constitutional recognition of the "distinctiveness of Quebec society, which includes a French-speaking majority, a unique culture, and a tradition of civil law."

Finally, in 1979, the report of the Task Force on Canadian Unity, better known as the Pépin-Robarts task force — one of whose members we are honoured to have among us — tackled the concept of the distinct character of Quebec. In connection with the equality of the provinces and the distinct status of Quebec, the report says, and I quote:

Quebec's unique position as the province within which a linguistic minority within the country as a whole is in a majority...

Further on, the report's authors mention that recognizing the distinctiveness of this province within Canada is in no way inconsistent with our traditions, and I quote:

Indeed, in the years since 1867 we have learned to live with the fact that Quebec has a considerable degree of what we think should be labelled a distinct status: in its civil law, in the recognition of French as an official language, and in the fact that three of the nine judges of the Supreme Court must come from that province.

As can be seen, the concepts of unique character, distinct character, distinct society and Quebec society are not used only by Quebec sovereignists. The preamble does not introduce any new concept. It does not rewrite history. I would like to remind honourable senators that the Leader of the Government in the Senate, Senator Carstairs, showed on April 4 that the preambles of the Official Languages Act and the Canadian Multiculturalism Act also contain fairly significant political statements.

I would like to conclude my remarks on this issue by answering Senator Joyal's argument that Canadians were never asked in a referendum to vote on the "unique character of Quebec society." As far as I know, all nine provinces that signed the Calgary declaration in 1997 carried out public consultations in the community. Then, their respective legislatures tabled or passed a resolution supporting the Calgary declaration. If I remember correctly, it is the duly elected representatives of the

people who voted on this issue. In whose name are these elected representatives speaking when they rise in their respective Parliaments? Their electors', of course! Are we forgetting the principle of popular representation, which is the cornerstone of our Canadian parliamentary system? Canadians and Quebecers did not have the opportunity to vote in a referendum on a matter just as important, namely the patriation of the Constitution in 1982. Initially, the Right Honourable Pierre Elliott Trudeau wanted to unilaterally go ahead with this patriation.

I would now like to deal with the problems raised by Senator Grafstein regarding the fifth whereas of the preamble to Bill S-4. It says, and I quote:

...the provincial law, in relation to property and civil rights, is the law that completes federal legislation when applied in a province, unless otherwise provided by law.

According to my colleague, this statement is incorrect, unintelligible, meaningless and deleterious. To support his statement he mentioned that the legislative counsels he had consulted could not understand either the meaning of the fifth whereas of the bill.

• (1510)

Honourable senators, I should like to remind you that this whereas is the very acknowledgement of a basic principle in constitutional law. The concept of suppletive law — *droit supplétif* in French — is at the heart of Canadian bijuralism. It is a complex principle I will try to quickly explain within the next few minutes.

Again according to the *Petit Robert*, the word "supplétif" means "qui supplée, complète" — not that which replaces. Canada is a country where two systems of law coexist: public law and private law. Public law comes under federal jurisdiction. Better known as "civil law" in Quebec and "common law" in the rest of Canada, private law in Canada is supposed to be a provincial responsibility, as I said earlier.

In Quebec, those notions are traditionally included in the *Civil Code of Quebec*. The following jurisdictions are contained in the code: estates, management of real property, mortgages, securities, property right, consumer protection, civil incapacity and guardianship, wedding celebrations, contracts and civil responsibility, and regulation of professions and occupations, which are exclusively a jurisdiction of Quebec. In other provinces, the corresponding areas defined under common law are also under provincial jurisdiction.

However, since 1867, the federal Parliament has passed more than 300 bills and all or part of their clauses deal with matters of private law. Parliament passed these acts under its exclusive jurisdiction in areas which, if it had not been for the division of jurisdictions under sections 91, 92 and 93 of the Constitution Act, 1867, would have been under provincial jurisdiction.



As a matter of fact, the federal government has several exclusive jurisdictions in private law: bank and monetary operations, interest on money, bankruptcy and insolvency, maritime law, invention and discovery patents, copyright, marriage and divorce. Despite the fact that the federal government derogates to or adds some clauses to the civil law of each province, this does not mean that all those acts constitute an autonomous legal system.

The concept of suppletive law, in the fifth whereas of the preamble of the bill can be defined in the following way: Federal private law, in Quebec, is made of the private law as defined in an act of the Parliament of Canada and of the provincial civil law if it is necessary to use an external source to enforce a federal act. The Parliament of Canada can pass acts, in the area of private law, which will constitute a complete code and in that case it is not necessary to use an external source. Parliament may also pass acts of private law which, being incomplete, will necessitate an express or implicit use of civil law for their implementation. This occurs when the acts say nothing about the definition of an expression used in private law.

In sections 92 and 94 of the Constitution Act, 1867, the Fathers of Confederation enshrined the principle that a federal law based on an external private law source will not necessarily apply the same way across the country.

As Justice Décarie of the Federal Court of Appeal said recently in *St-Hilaire*:

Systematically associating any federal legislation with common law is to ignore the Constitution. Any judge responsible for administering a federal law in a matter regarding civil rights in Quebec must know that in general ... civil law is the suppletive law. This does not mean that efforts should not be made to harmonize the impact of federal laws across the country where possible in private law. It means that asymmetry is the rule under the Constitution. It means that any harmonization can be based on civil law as well as on common law.

This is the interpretation that must be accepted with regard to the fifth whereas in the preamble of Bill S-4. In this sense, it is clear and compatible with the provisions of the bill.

Honourable senators, in light of the arguments I have put forward today, the preamble of the bill is clear, intelligible and compatible with the provisions of this legislation.

Now I will talk about the Senate resolution of 1995. It was mentioned throughout debate on Bill S-4, and I thought it would be appropriate to set the record straight. I should like to discuss briefly the issue of the validity of the Senate resolution, on which the Department of Justice based the second whereas in the preamble of Bill S-4.

If you are really concerned about certain words in Bill S-4, listen to what was voted on in 1995. The motion stated, and I quote:

Whereas the People (not the citizens, "the People") of Quebec have expressed the desire for recognition of Quebec's distinct society, the Senate recognize that Quebec is a distinct society within Canada; the Senate recognize that Quebec's distinct society includes its French-speaking majority, unique culture and civil law tradition; the Senate undertake to be guided by this reality; the Senate encourage all components of the legislative and executive branches of government to take note of this recognition and be guided in their conduct accordingly.

This is exactly what the Minister of Justice did. The text of this motion was adopted, unanimously by the way, by the Senate on December 14, 1995. The motion was adopted following a solemn commitment made by the Right Honourable Jean Chrétien during the last week of the referendum campaign, in October 1995. On three occasions, namely on October 24 in Verdun — and Senator Joyal was with me on all three occasions — on October 25 during a message addressed to the nation, and on October 27, at a huge rally of Canadians and Quebecers in Montreal to support the no side, the Prime Minister recognized that Quebecers form a distinct society within Canada.

On November 29, 1995, the Prime Minister tabled in the other place a motion almost identical to the one that I read. He said, and I quote:

Less than a month after the referendum, the government is keeping its word and fulfilling its commitments.

This promise had been made when all the federalist forces in Quebec were desperately trying to win on October 30, 1995. I will not dwell on that aspect of the issue. I simply wanted to remind my two colleagues of the context in which the motion was brought forward by their leader.

Honourable senators, in the speech that he made on April 4, Senator Grafstein said, and I quote:

A resolution is entirely different than an order. Authorities such as Driedger — and honourable senators can check (and I did) all say the same thing. They say that a resolution of this chamber is an opinion at a moment in time of those who support that particular resolution. In effect, the resolution disappears at the end of that session.

• (1520)

Thus the government cannot use the text of this resolution to support a defence of the validity of the second whereas in the bill, because it cannot be binding on future Parliaments. The same day, Senator Cools said that the resolution would die on the Order Paper with the dissolution of the 35th Parliament. That is another significant statement.



Honourable senators, I am totally in agreement with Senator Grafstein that the 1995 resolution constitutes an opinion expressed at the time it was adopted. I have, however, consulted two reference works: the 6th edition of *Beauchesne's Parliamentary Rules & Forms* and *Erskine May's Treatise on The Laws, Privileges, Proceedings and Usage of Parliament*. Neither of these authorities on Canadian parliamentary procedure states that a resolution passed by the Senate or the other place disappears at the end of a parliamentary session.

In a question to Senator Grafstein, Senator Murray indicated that Prime Minister Jean Chrétien had used a resolution that had been passed by a previous Parliament to block Conrad Black's appointment to the House of Lords in the Westminster Parliament. My colleague was unable to apply the principles he cites from Dreidger to respond to this most interesting question. We still await his response. Until proved otherwise, the resolution we have passed contained no date indicating when it would cease to apply to the work of this house.

If, in the text of this resolution, we had included a date, then the resolution would have disappeared on that date. No date was given.

As well, the Senate as a whole has never voiced an opinion other than the one adopted on December 14, 1995. We could have decided to do so, but we did not. As the text of the resolution is still in existence in the *Debates of the Senate* and the *Debates of the House of Commons*, I believe it will continue to guide the work of the federal Parliament.

In this sense, the Minister of Justice could thus refer to the text of the resolution as justification for the wording of the second whereas clause in the preamble to Bill S-4.

As for the argument used by Senator Cools, the resolution did not die on the Order Paper following dissolution of the 35th Parliament in the spring of 1997. The reason is very simple. From the time of its passage on December 14, 1995, the text of this resolution no longer appeared in the Order Paper of the Senate. This is not hard to understand.

I would conclude my remarks by offering a practical demonstration of the operation of Canadian bijuralism and of the application of the concept of suppletive law. In order to do so, I will refer to the decision by the Federal Court of Appeal of March 19, 2001 in *St-Hilaire*. This case involved Constance St-Hilaire versus the Attorney General of Canada and the Treasury Board.

The facts are as follows. On February 3, 1995, the accused stabbed her husband, Mr. Morin, with a knife in the course of a violent domestic quarrel. He died several hours later. Charged with first degree murder, Constance St-Hilaire pleaded guilty to a reduced charge of manslaughter and was sentenced to jail for two years less one day. Mr. Morin — and this is where the federal

Parliament comes in — was a member of the public service of Canada, having worked for the Coast Guard of Canada. He had contributed for over 25 years to the pension plan provided under the Public Service Superannuation Act and to the death benefits plan also provided by the law.

Mrs. St-Hilaire applied to the Treasury Board to get the benefits she was entitled to under the law, on the one hand as the surviving spouse and, on the other, as heir to the property of Mr. Morin. The federal department turned down her request citing a rule of common law which provides that no one may benefit from a crime. This refers to the notion of unworthiness by operation of law. As a result, Mrs. St-Hilaire appealed the decision to the Federal Court, Trial Division, claiming that the provisions of the *Civil Code of Quebec* should apply in her case and not those of the common law regarding unworthiness by operation of law and inheritance. Under article 620 of the code, she could not be declared unworthy since she had not been convicted of first degree murder. Justice Blais of the Federal Court, Trial Division, agreed with Mrs. St-Hilaire, stating that the applicable law in this case was Quebec's civil law and not the common law, since there was nothing in the law about the notion of unworthiness by operation of law. Therefore, under Quebec law of succession, a person is unworthy to inherit by operation of law only if there was an intent to commit the alleged crime. Therefore, article 620 of the code did not apply since the offence of manslaughter does not come under it.

Treasury Board appealed the case to the Federal Court of Appeal, arguing as follows: The case at issue is a matter of public law exclusively and more specifically of administrative law, that common law is the source of federal public law and applies to the federal government even within Quebec territory, that under common law there is a rule of public order, which provides that no one may benefit from a crime and that applies to the crime of manslaughter, that Quebec private law cannot set this rule aside in view of federal public law and, finally, that, in any case, the crime of manslaughter results in the unworthiness by operation of law under Quebec civil law.

The Court of Appeal, citing bijuralism and the concept of suppletive law, rejected the arguments brought forward by Treasury Board and maintained the ruling by the Trial Court. The Department of Justice cannot always have its way! Justice Décaré mentioned in paragraph 35 of his comments, and I quote:

The Quebec plaintiff, involved in litigation regarding her civil rights under a federal act which is silent in this regard, can expect to have her civil rights defined by Quebec civil law even though the opposing party is the federal government.

In his remarks, Mr. Justice Létourneau pointed out that the Federal Court of Appeal:

...has frequently recognized the suppletive nature of civil law with respect to federal law.

Please note that "supplétif" is the same word used in the preamble! He goes on as follows:

The Court has tried, insofar as possible, to harmonize the impact of federal law in order to avoid disparities which would be a source of injustice, while recognizing a right to a different resolution when harmonization is impossible.

This is precisely what the court did in *St-Hilaire*.

Therefore, in conclusion, the coexistence of two systems of law in Canada, while very complex, is the foundation for Canadian bijuralism, which is held up as a model by several other countries in a similar situation. I believe that the harmonization process proposed in Bill S-4 will enhance our country's international prestige.

Similarly, I believe that the declaration of principle in the preamble to the proposed legislation will give Quebecers, Canadians and foreign observers greater insight into the importance of the two great Canadian private law traditions to our federal law and to the operation of our legal system. The preamble to Bill S-4 describes this reality so well that Mr. Justice Décaré took care to cite it in full in his comments in order to better explain the concept of harmonizing federal law with the Civil Code of Quebec.

• (1530)

For all the reasons I have mentioned, I urge honourable senators to reject the amendments moved by Senators Grafstein and Joyal and to give their full support to Bill S-4. I am now available to answer your questions.

**Hon. Serge Joyal:** Honourable senators, I simply wish to point out that the honourable senator's remarks imply that, on December 14, 1995, I voted in favour of the resolution that Quebec should form a distinct society. I would point out to honourable senators that I was sworn in as a member of this chamber on December 27, 1998. I therefore did not vote in favour of this resolution.

**Senator Nolin:** Honourable senators, I did not mention Senator Joyal. This decision was taken by the Senate of that time. That was what my text insinuated and that is what parliamentary law tells us as well.

[English]

**Hon. Jeremiah S. Grafstein:** Honourable senators, I made a brief speech against that resolution here. The speech was very simple. It was three lines long. I said that Canada is a distinct society and that all the rest is commentary. Those comments are in the *Debates of the Senate*.

**Hon. Lowell Murray:** Honourable senators, I have a brief intervention to make, but I will not detain the Senate now. I

understand that we are operating under an understanding, if not a house order, that the Senate should adjourn at 3:30 today. I will, therefore, make my fairly brief observations tomorrow, if I may propose the adjournment of the debate now.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, it is true that the Senate usually adjourns at 3:30 p.m. on Wednesdays. However, since several senators wish to take part in today's debate, and given that tomorrow the debate on Bill S-4 will have to be completed by 3:15 p.m., I would propose that today's sitting be extended, so that everyone can be heard.

**The Hon. the Speaker pro tempore:** Are there other senators who wish to address this issue?

[English]

**Hon. Eymard G. Corbin:** Honourable senators, with leave, may I ask a question of clarification to the Deputy Leader of the Government? I understand that the ideal adjournment on Wednesday is at 3:30 p.m. Nevertheless, I have a committee to attend, and other committees have scheduled meetings at 3:30 p.m. today on the understanding that there would be an adjournment. Does the Foreign Affairs Committee have leave to sit at 3:30 p.m. or does it not?

**Senator Robichaud:** Honourable senators, no motion was adopted to adjourn at 3:30 p.m. today. There was a motion that the sitting would start at 1:30 p.m. today.

As I said, because of the importance of the question before us, I want to ensure that those who want to speak have an occasion today because tomorrow will also be a short day. Tomorrow, all questions must be disposed of by 3:15 p.m.

I would hope that we could continue for perhaps 15 minutes or 20 minutes because only a few senators today are ready to speak. Committees could then hold their meetings. This discussion is important, and we should continue with debate.

**Hon. Roch Bolduc:** Honourable senators, if we do not have the time to speak today, we might be squeezed for time tomorrow. Is it possible to skip Question Period tomorrow in order that we would have adequate time to speak?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, one would find on this side of the house agreement to put off that house order of time allocation to next week if it were the unanimous consent of the house. We then would have sufficient time.



**Senator Grafstein:** Honourable senators, Senator Nolin raised a number of issues in his speech that obviously were directed to myself, as well as others. I have one question for him. Perhaps I could ask him that question, and then I would try to respond to him tomorrow in the attenuated time that has been made available to us to deal with this important issue.

**The Hon. the Speaker *pro tempore*:** Is leave granted to Senator Grafstein to ask his question of Senator Nolin?

**Hon. Senators:** Agreed.

**Senator Grafstein:** Senator Nolin, you referenced the phrase "unique society" in your speech. Do you agree that this phrase could be used differently by separatists or sovereignists in Quebec than it could be by federalists in Quebec?

[Translation]

**Senator Nolin:** Honourable senators, each individual can use the words that he wants to express an idea, but that particular expression will be perceived and interpreted the same way by all Quebecers. There is no question about that.

**Senator Joyal:** May I ask Senator Nolin, if he agrees, to please distribute the full text of the article by the Right Honourable Pierre Elliott Trudeau, which he quoted from, specifically pages 266 and 269 in the September 28, 1992 edition of *Maclean's*, in which Mr. Trudeau is clearly opposed to including the concept of distinct society in a preamble? Could the Honourable Senator Nolin, who quoted an excerpt of that article, distribute the full article, so that all senators can decide for themselves what the Right Honourable Pierre Elliott Trudeau thought of this idea?

**Senator Nolin:** Honourable senators, I have no objection in tabling the texts that I quoted in my speech. If the Right Honourable Pierre Elliott Trudeau contradicted himself in another article, you can take the initiative of distributing the full document yourself. I will not do it. I will table the article in which he said he was not opposed to having the terms "distinct society" included in a preamble. He suggested that himself.

He opposed an interpretation clause, such as the one included in the Meech Lake Accord. Senator Beaudoin could confirm this. The Right Honourable Pierre Elliott Trudeau did not oppose a preamble for one simple reason: a preamble is a statement of principle, whereas in the Meech Lake Accord an interpretation clause was needed, and it would have saved us a lot of problems elsewhere, but that is another matter. I have no objection to tabling the text I quoted, but not the article. If it is contradicted, that is another matter.

**Senator Joyal:** Honourable senators, with Senator Nolin's indulgence, I would say, I will myself distribute the article by the Right Honourable Pierre Elliott Trudeau. Honourable senators

will have the opportunity as well to draw their own conclusions on the coherence of the political thought of the Right Honourable Pierre Elliott Trudeau.

[English]

• (1540)

**Hon. Wilfred P. Moore:** Honourable senators, I have listened carefully to the comments made by my colleagues both in committee and in this chamber. No senator has a problem with the bill *per se*, and all admire this exemplary juridical harmonization exercise. However, the preamble to Bill S-4 has numerous inappropriate phrases. Other senators have spoken in detail about these shortcomings.

Honourable senators, it is clear from those submissions and from my own experience as a barrister that this preamble leaves much to be desired. Further, it is also clear from the evidence given by Department of Justice officials at committee that this preamble is not necessary for the bill and that its removal will have no impact on the bill.

In respect of the words in the last phrase of the second recital and the concept of the "unique character" of a provincial society, I believe that the societies of all provinces and territories are of unique character. A society cannot be unique in relation to another, in fact, without that other being unique in relation to the first.

I think of my own beloved Nova Scotia, with its French-speaking and Gaelic-speaking communities, its music and its Maritime culture, it being the place where the first seeds of Canada were sown by Samuel de Champlain, it being the seat of the first responsible government in Canada, and it being the birthplace of the freedom of the press in Canada. To say that Nova Scotia society is of unique character cannot be denied.

Honourable senators, I understand the comments and concerns of Senators Grafstein and Joyal and the debate that this imprecise preamble has led us into. I share their frustrations herein. In view of the fact that this preamble is wanting and in view of the fact that this preamble is not necessary, I shall support the amendments tabled by my colleagues. I urge other senators to do so.

It is my preference, honourable senators, that the amendment of Senator Grafstein be adopted by this chamber. However, in considering the possibility that his amendment be not adopted, I wish to table an amendment to the fourth recital of the preamble. My amendment is simply an attempt to more clearly set out the benefit that should come to Canadians by virtue of the harmonization achieved this bill. I believe that the wording in my amendment is more appropriate than the wording in the draft bill. I commend this amendment to honourable senators and ask for your support of it.



## MOTION IN AMENDMENT

**Hon. Wilfred P. Moore:** Honourable senators, I move, seconded by Senator Joyal:

That Bill S-4 be not now read a third time but that it be amended in the preamble, on page 1, by replacing lines 15 and 16 with the following:

"two major legal traditions gives Canadians enhanced opportunities worldwide and facilitates ex-";

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion in amendment?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**Hon. Marcel Prud'homme:** Honourable senators, could Senator Moore explain to me why it is that we dilute a reality and create confusion when we talk about the uniqueness of each and every one of us? Tomorrow I will speak to my colleagues about their individual uniqueness.

Honourable senators, I could go from bench to bench in this place and talk to Senator Finestone, who is from Quebec, about her uniqueness. I could speak to Senator Robichaud about the Acadian people. I could speak to Senators Austin and Grafstein about their uniqueness. I could speak to Senator Chalifoux, who is a proud member of the Métis society. I could speak to Senator Watt about his uniqueness. I could talk to Senators Cools and Oliver about their uniqueness.

Honourable senators, please help me to understand. The phrase "unique character" only serves to create more difficulties for federalists, of whom I am one. I am absolutely sure, without the shadow of a doubt, that I am a "Canadien français du Québec." In this sense, I feel unique. If only people could address this issue without trying to dilute it.

**The Hon. the Speaker *pro tempore*:** Does the honourable senator have a question?

**Senator Prud'homme:** Honourable senators, I asked why there is an insistence to always dilute what has been an absolute reality since 1867 — the uniqueness of society. Why is it that everyone wants to dilute the reality of uniqueness? Why is it so difficult to accept the fact that without it, Canada would not be the country that we know?

Senator Moore is unique in his own way in that he is from Nova Scotia. However, in all my 38 years in Parliament, I have never heard anyone from Nova Scotia talk about their

uniqueness, while the other debate has been happening since 1774. Please help me to understand this sudden reflection on the issue of uniqueness.

**Senator Moore:** Honourable senators, Senator Prud'homme has answered his own question. One might ask the honourable senator the same question: Why does he want to dilute the other realities of the other unique situations throughout the country? The reality begs the question.

**Hon. Lorna Milne:** Honourable senators, this morning I experienced a bit of chagrin when I was referred to by a senator from Quebec as the "quintessential WASP." I was somewhat reassured when Senator Prud'homme omitted me from his list of unique characters. I consider it a rather pejorative term, but as a WASP from Ontario, I may provide a different emphasis on some of the issues that have been discussed.

In this chamber and in committee, I heard the statement repeated over and over again that words matter. I agree that words do indeed matter — they are of the utmost importance. Bill S-4 is all about the harmonization of the words in federal statutes so that the English-language version of the civil law can apply in the province of Quebec and the French-language version of the common law can apply equally and equitably in the rest of Canada. The only source of contention in this bill is the debate over the preamble.

• (1600)

Honourable senators, this is a government bill. I believe that the Government of Canada has a perfect right, and indeed an obligation, to spell out its intentions in a preamble, particularly in a bill such as this one, which is the first in a series of bills on this important matter. This preamble is perfectly in order and it is a clear and proper statement of intention. Originally, it was nothing more and nothing less. However, the extensive debate on this matter seems to have escalated it into something more, and therefore, I wish to return to the importance of words.

In 1995, as has been pointed out, the Senate passed a resolution that stated, among other things, the following:

- (2) the Senate recognize that Quebec's distinct society includes its French-speaking majority, unique culture and civil law tradition;
- (3) the Senate undertake to be guided by this reality;
- (4) the Senate encourage all components of the legislative and executive branches of government to take note of this recognition and be guided in their conduct accordingly.

That motion passed unanimously, with the support of those honourable senators who were here at that time. For those senators who have arrived in this place since then, it may be useful to recap why that motion passed with such resounding support. Senator Nolin has already referred to this matter.

The referendum held in the Province of Quebec had just narrowly been defeated. Those who live outside Quebec had been forced to stand on the sidelines while our country came excruciatingly close to self-destruction. This motion was put forward by Prime Minister Chrétien as part of the federal effort to make certain that such a narrow escape from disaster would never happen again.

This 1995 motion was the Senate's heartfelt response to the federalist supporters in the Province of Quebec. Senators in this place voted for the motion and gave, I believe, our solemn word to the people of Quebec that we undertook to be guided by the reality that the people of Quebec do indeed form a distinct and unique culture within this country.

Those who claim that a motion dies with the Parliament that passed it may be absolutely, legalistically speaking, correct. Does any honourable senator dispute that? Senator Nolin says that that is not the correct legal position. Does the general public anywhere in Canada think that a government's word is really only good until the next election? Certainly not. In no circumstances would a motion like the one that we supported so strongly in 1995 impose upon us only a temporary and time-limited obligation. I for one do not feel that it does.

I believe that honourable senators in this place gave their solemn word to Quebecers in 1995 that they would be guided in the future by that motion. I believe senators undertook both a moral and an emotional obligation to Canadians who live in that unique province. I believe that words do matter. I believe that my word matters, and I believe that I gave my word to the people of Quebec in 1995. I do not intend to go back on that word and I urge this Senate to stand by its word.

This is a long overdue and carefully crafted bill, with an appropriate and entirely proper preamble. I will not support any amendment that removes the preamble or changes the second "whereas" in the preamble to the bill. I urge honourable senators to join me in rededicating ourselves to the principle so clearly laid out in that second paragraph.

Whereas the civil law tradition of the Province of Quebec, which finds its principal expression in the *Civil Code of Quebec*, reflects the unique character of Quebec society;

**Hon. Joan Fraser:** Honourable senators, I believe that I am the senator from Quebec to whom Senator Milne referred at the outset of her remarks. For the record, I would say that being quite Protestant and anglophone myself, I could hardly consider it an insult to call someone a WASP.

What I was saying to Senator Milne, honourable senators, was in the context of a brief conversation we had when she told me what she was about to say this afternoon in the Senate. I was deeply moved by it and I said, speaking as a Quebecer, that I

thought it was simply wonderful that someone with such strong roots in Ontario, with such long political experience and background in Ontario, should speak so nobly in this cause.

**Hon. Jeremiah S. Grafstein:** Honourable senators, I wish to ask the Chairman of the Constitutional and Legal Affairs Committee a simple question. Is she saying that a legalistic argument based on a legal statute is irrelevant to the debate in this Senate?

**The Hon. the Speaker pro tempore:** Is the honourable senator taking questions?

**Senator Milne:** No.

**Hon. Charlie Watt:** Honourable senators, I, too, should like to say a few words in the debate on this important bill that is about to be passed. I, too, at times, feel that we talk about things that further complicate matters rather than making them simple. At times I disagree with Senator Prud'homme, but this time I agree with him.

Honourable senators, I will refer to the statements that were made by the National Chief of the Assembly of First Nations, Matthew Coon Come, which I believe he made in December 5, 1995 in a meeting of the Constitutional and Legal Affairs Committee. The potential adverse impact of the bill on aboriginal people, such as the Cree, Inuit and the other aboriginal peoples, in the Province of Quebec is uncertain. I say that because Bill C-99 on the provincial government side has been formulated and passed, and it also described the people of Quebec as one people. As we all know, we are not one people. We are different nations within the Province of Quebec. Indeed, the government of René Lévesque passed a resolution stating that there were 11 aboriginal nations in the Province of Quebec.

Honourable senators, I wish to refer to Matthew Coon Come, and a brief comment he made on the distinct society resolution. He said that the Assembly of First Nations believes that the distinct society resolution, as drafted, is seriously imbalanced. Recognition of a Quebec distinct society, if it is deemed desirable, should have been done in a balanced manner, at least to the extent that it was accomplished in the Charlottetown accord.

Since it is unknown exactly what elements, other than the French speaking majority, unique culture and civil law traditions, are included in the distinct society notion, it is imperative that such recognition also refer to other balancing and affirmative elements pertaining to aboriginal people. The present motion does not even contain a non-derogation clause in favour of aboriginal people. In this sense, the Prime Minister's motion breaks traditions with both distinct society provisions in the Meech Lake and Charlottetown accords.



• (1600)

It must be noted that this basic requirement of non-derogation was adopted and approved by all governments in both of those constitutional rounds. The resolution states that:

The people of Quebec have expressed the desire for recognition of Quebec's distinct society.

First, it should be made very clear in the resolution who exactly constitutes the people of Quebec. The Crees and the other Aboriginal people in Quebec have repeatedly stated that we are each distinct peoples, and not part of a single Quebec people. Even the Lévesque government in its own resolution recognized 11 aboriginal First Nations in Quebec. It is time now for Canada to act.

If the Government of Canada intends in the content of this resolution to include the Aboriginal people in its description of a single Quebec people, it would be a forcible inclusion since it lacks our consent. It would also violate our rights to self-identification that the United Nations is in the process of recognizing in explicit terms.

Moreover, if we and other Aboriginal peoples are included in the phrase "people of Quebec," then the preamble to the Prime Minister's motion misrepresents us since we have always said that we are the Eeyou, the Crees, our own people, and have never opposed the recognition of Quebec's distinct society.

On the other hand, if Aboriginal peoples are distinct from the people of Quebec, as is obvious from the text of section 35 of the Constitution Act, 1982, and the Prime Minister's motion should make this clear. In addition, the motion should include affirmative language requiring Parliament to recognize and respect in its conduct the fiduciary responsibility in favour of Aboriginal peoples.

As with Bill C-110, we feel that the proposed distinct society resolution fails to adequately take the very real secessionist context into account. It is beyond the Prime Minister's commitment during the Quebec referendum to recognize the people of Quebec in any parliamentary instrument. This is a different issue from the recognition of any distinct society in Quebec and could have extremely serious consequences in a secessionist scenario.

I should like to clarify this important issue. In the absence of adding further clarification in the motion itself, it is likely that the separatists will claim that Canada is recognizing that there is a single people of Quebec. This will almost certainly lead to the assertion by the separatists that everyone is thus bound by the results of a single referendum on the issue of secession. My people absolutely deny the validity of any such claim.

Honourable senators, I am glad to have had this opportunity to place these words on the record.

**Hon. Lowell Murray:** Honourable senators, I am sure the Leader of the Government, or someone on behalf of the government, will take the opportunity before the debate ends to

make a brief formal reply to the questions that have been raised by our friend, Senator Watt. I should not, therefore, try to anticipate that.

The preamble that we are talking about simply affirms that the Quebec civil law tradition is one of the elements constituting the unique character of Quebec society. It does not go further than that. In any case, I will leave that to a spokesman for the government to make a more considered reply.

If Senator Moore is correct, therefore, that each of our provinces and territories is in its own way distinct, then whatever is wrong with stating in the preamble to this bill that Quebec civil law tradition is one of the elements that makes Quebec society distinct? I leave that question with you for your careful reflection overnight and I will propose the adjournment of the debate and resume tomorrow.

On motion of Senator Murray, debate adjourned.

## FINANCIAL CONSUMER AGENCY OF CANADA BILL

### SECOND READING

Leave having been given to revert to Order No. 4:

On the Order:

Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Rompkey, P.C., for the second reading of Bill C-8, to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, at the conclusion of this debate this afternoon, there was a question as to whether the Minister of Finance would be prepared to appear before the committee. The answer that I have been able to obtain is the following: Mr. Peterson has handled this bill all the way through the House of Commons. As you know, Mr. Peterson is presently ill. Thus, the commitment is that if Mr. Peterson is not sufficiently well during the hearing process of the Banking Committee to be able to appear before the committee, then the Honourable Mr. Martin will appear. However, the first choice will be Mr. Peterson, if he is able.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I wish to underscore the point that because the text of the bill refers in many parts to powers that will be granted to the Minister of Finance and to the Deputy Minister of Finance, because of the statements that we have heard in debate so far, and notwithstanding that Mr. Peterson may be the sponsoring minister, there is a desire that the Minister of Finance be heard.



If efforts could be made by the Leader of the Government in the Senate to urge her colleague the Minister of Finance to make himself available at an opportune time while the committee is deliberating on that legislation, we would agree that the bill could be referred to committee.

**Hon. Roch Bolduc:** Honourable senators, may I point out to the Leader of the Government in the Senate that we are talking here about the shareholding system of the banking industry.

As you know, we have established by legislation the Canada Pension Fund Corporation, which is a major financial institution. In a few years, we will be talking about hundreds of billions of dollars in the hands of those people and they will invest the money in various corporations in Canada and throughout the world, including the banking industry of Canada. Thus, the Minister of Finance is deeply involved and I have some questions for him. I would like to have the minister, if possible.

**Senator Carstairs:** As I indicated earlier, I will continue to make every effort in that regard.

[Translation]

**Hon. Marcel Prud'homme:** Honourable senators, the aim of this bill is such — and I know the minister's powers of persuasion — that everything must be done to get the Minister of Finance to appear himself. Scheduling Mr. Peterson to appear could cause uncertainty. In order to avoid problems, we should perhaps insist that the minister ask the Minister of Finance directly to appear. I think there is considerable interest in this and I believe that Mr. Martin would be interested in appearing. All of this would take place without waiting to see how Mr. Peterson, to whom we wish a speedy recovery, is doing.

[English]

**The Hon. the Speaker *pro tempore*:** Is the house ready for the question?

**Hon. Senators:** Yes.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Robichaud, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.

[Translation]

#### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, on Wednesdays, we usually try to finish the business of the Senate earlier. Given the lateness of the hour, I ask that all items in the Orders of the Day and on the Order Paper stand in their present order until the next sitting of the Senate.

The Senate adjourned until Thursday, April 26, 2001, at 1:30 p.m.



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CANADA

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OFFICIAL REPORT  
(HANSARD)

Thursday, April 26, 2001

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THE HONOURABLE DAN HAYS  
SPEAKER



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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Thursday, April 26, 2001

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### CANADA BOOK DAY

**Hon. Joyce Fairbairn:** Honourable senators, I would not want the week to go by without drawing attention to what is now an annual ritual called Canada Book Day. This day was celebrated on Monday, when we were not sitting. I want to ensure that senators remember that there is a moment during the year when people across Canada — young children, writers themselves — celebrate our history and our authors, and, most particularly, invest in young children a love of reading that will carry them through the rest of their lives.

I spent Canada Book Day at the Calgary Public Library with four classes of students from the ages of five through to eight. The atmosphere was lively and fun. The students were engaged and were right into their books.

This brings me to the happy moment that I have enjoyed so much over the last six years, and that is continuing to celebrate the abiding friendship between myself and the Leader of the Opposition, Senator Lynch-Staunton. Today, in my quest to keep him up to date with our authors, I am offering a book of letters written between 1976 and 1995 by Robertson Davies. It is called *For Your Eyes Alone*. His letters are described as being as beautifully written as his novels.

**Hon. Senators:** Hear, hear!

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I should like to thank the Honourable Senator Fairbairn for her kind gesture and for reminding us of the importance of literacy. I want to congratulate her on her recent, well-deserved reappointment as the minister's special adviser on literacy.

In previous years, it has been difficult for me to find an appropriate book in return for the one the honourable senator chooses so wisely and which I enjoy so much. This year, however, the choice was very easy. The author is one of our members. She is a senator. She sits next to Brenda Robertson, and her name is Pat Carney. It is with great pleasure that I offer to Senator Fairbairn *Trade Secrets: A Memoir* by Pat Carney, who I am sure will give the honourable senator an appropriate dedication the next time she is in Vancouver.

#### ANNIVERSARY OF CHERNOBYL NUCLEAR ACCIDENT

**Hon. A. Raynell Andreychuk:** Honourable senators, on this day, April 26, 15 years ago, the Chernobyl accident occurred. Its horrific consequences are still being felt around the world, but more particularly and poignantly in Ukraine. The Chernobyl nuclear accident brought disaster to the peoples of the Ukraine, Belarus, Russia and other European countries. However, its consequences and the need to rethink nuclear strategy and safety with respect to reactors for non-military use are imperative for all countries. In Ukraine alone, Chernobyl took thousands of lives with a painful consequence to many children, causing thyroid gland cancer and putting some 70,000 workers into the disabled category, the consequences of which we are uncertain to this day. Ten thousand hectares of fertile land have been contaminated and could be classed as a dead zone.

Ukraine, in its delicate and fragile reformation to a democratic and independent state, has had to spend over \$1 billion to eliminate the consequences of the accident, but the human and financial costs are far from over.

The memorandum of understanding concerning the shutting down of the Chernobyl nuclear power plant and the international assistance to Ukraine between the G7 countries, the European Union and the government of Ukraine was signed in Ottawa in 1995. Despite serious economic troubles and the shortage of electricity for Ukraine, on December 15, 2000, Ukraine completed fully its international obligations by shutting down the Chernobyl nuclear power plant.

• (1340)

While Canada has given financial and technical assistance, the problems for Ukraine as a consequence of Chernobyl are far from over. I wish to pay tribute to the thousands of Canadians who donated generously of their money, time and expertise to assist Ukraine and, in particular, to assist the children of this disaster. However, the treatment of thousands of victims remains vital, and there is a lack of infrastructure for the decontamination of the Chernobyl zone.

Honourable senators, it is a time to reflect on the loss of thousands of lives, but it is also a time to renew our dedication to assisting Ukraine in overcoming this disaster and to ensuring that this type of disaster cannot be repeated anywhere in the world.

[Translation]

#### CANADIAN INSTITUTES OF HEALTH RESEARCH

**Hon. Yves Morin:** Honourable senators, a year ago today, the Canadian Institutes of Health Research officially undertook their new mission. I had the honour of helping to establish these new institutes.

Last July, the board of directors, chaired by the internationally renowned geneticist, Dr. Allan Bernstein, established 13 virtual institutes, which combined all research in the health field: biomedical research, clinical research, research into the health care distribution systems and research into health of populations.

[English]

Canadian scientists in our hospitals, universities and other research centres from coast to coast can now be linked through this network of institutes. The bottom line is that this virtual dream has now become a reality.

Honourable senators, I am proud to be a member of the government which has not only had the foresight to create these unique organizations, these Canadian Institutes of Health Research, but also has committed in the Speech from the Throne to increase the funding for the coming year. By investing in today's research, all Canadians will benefit tomorrow.

## NATIONAL DEFENCE

### REPLACEMENT OF SEA KING HELICOPTERS

**Hon. J. Michael Forrestall:** Honourable senators, I should like to quote extensively from a recent letter to the editor from Lee Myrhaugen, a retired colonel who is the coordinator of Friends of Maritime Aviation. The letter reads:

Recently a number of newspapers carried a letter from Mr. Rod Skotty, Director of the Maritime Helicopter Program, Lockheed Martin Canada, applauding the Ministers of National Defence and Public Works for their prudence in selecting an "internationally accepted procurement strategy" for the purchase of Canada's new fleet of maritime helicopters. The procurement strategy the Canadian Government is proposing, and which Mr. Scotty endorses, would see two Prime Contractors selected, one for the Helicopter and, later, one for the Mission Systems' Integration. A careful examination of the statements Mr. Skotty uses to back up his assertions would reveal that many of them are misleading, and some are even false. The purpose of this letter is to provide your readers a clearer understanding of the issue.

Over 20 years ago, the U.S. Navy was forced to award two contracts for the procurement of frigate-borne S8-60B LAMPS Mk III helicopters. Back then, systems integration was a new discipline and helicopter manufacturers lacked the expertise to offer a single and total package solution. Two contracts were a necessity, not a choice. The success of the LAMPS program was clearly not a product of the split contract, but rather was due to the tenacity and effort of the well-staffed U.S. Navy Program Office which managed that highly complex contractual arrangement. In that dual contractor situation, the United States Government became

the de facto Prime Contractor. Such a responsibility for any government carries a high cost in terms of time, the need for skilled personnel and the money...

Mr. Skotty went on to say that the U.S. Government employed the same procurement concept in other programs, as did the United Kingdom and Spain. In fact, the U.S. Government abandoned the dual-contract concept in 1987 when it awarded the SH-60F maritime helicopter Prime Contract to Sikorsky, which became responsible for the mission systems and the helicopter in an all-encompassing contract. The U.K. Government adopted a process whereby the systems integrator would be the Prime Contractor in a dual contract process similar to that which the Government of Canada is proposing to replace our Sea Kings. However, what Mr. Skotty does not point out is that the project has been reported by the U.K. National Audit Office to be hundreds of millions of dollars over budget and years behind schedule. Spain bought its helicopters as a foreign military sale directly from the U.S. Government and thus had no say in the procurement process.

The focus of all this should be on delivering the "best value" helicopter to the Canadian Forces in the most cost-effective manner. Given the advances in computing systems design —

**The Hon. the Speaker:** I am sorry, Senator Forrestall, but your time has expired.

## COMMEMORATION OF THE HOLOCAUST

**Hon. Jeremiah S. Grafstein:** Honourable senators, yesterday I said: History never lies; history just takes time to tell the truth.

This week commemorates the Shoah, the Holocaust. What should we commemorate?

Let me briefly conclude my statement of yesterday. Yesterday, I made reference to *Constantine's Sword*, a 700-odd page work recently published by James Carroll, a respected Catholic scholar and former priest. This book chronicles the history of the Church and the Jews through the ages. Let me share some of his conclusions.

Repentance is more than an individual act. All depends on future conduct. Each of us must ask ourselves whether the deadly virus of anti-Semitism continues to seep through the catechism, the teachings of the Church, through the Mass, to the masses. Is a "*mea culpa*, even *mea maxima culpa*," enough? Is the lesson of the Shoah yet to be learned or even taught?

And why, honourable senators, must we still ask ourselves these questions 50 years later? Does recent history augur well for the future of the human condition? Meanwhile, the Shoah passes understanding. It remains beyond imagination.



## WAR MUSEUM

### OPENING OF GUN SCULPTURE EXHIBIT

**Hon. Douglas Roche:** Honourable senators, I call to the attention of the Senate a very special exhibit that is opening today at the War Museum here in Ottawa, with the Honourable Deputy Prime Minister Herb Gray officiating.

The exhibit is a sculpture made of 7,000 guns and small arms that were used in combat zones around the world. These guns have been collected and melded together into the form of a prison cell, where one can enter and there experience the overwhelming destruction of life that occurs in modern-day conflicts.

Rather than dwelling on war, the sculpture elevates our thoughts to a world without violence. The two sculptors, Sandra Bromley and Wallis Kendal, are accomplished artists who live in Edmonton, where the exhibit opened more than a year ago. From there, it has travelled around the world and will next be seen at the United Nations in New York when the UN Small Arms Conference occurs this summer.

Honourable senators, this gun sculpture is a true work of art for peace and an inspiration for the job of peacemaking. It can be seen at the War Museum on Sussex Street for the next two months.

### CORRECTION TO COMMENTS MADE DURING DEBATE ON BILL C-8

**Hon. David Tkachuk:** Honourable senators, yesterday in asking a question of Senator Angus after his speech, I said that the speech was distributed to the media by Senator Kolber and I found out that today that this was not true. I just assumed it was so because the media were there. I do not like to misinform honourable senators so, on behalf of Senator Kolber and myself, I wish to correct that misinformation.

[Translation]

## ROUTINE PROCEEDINGS

### FEDERAL LAW-CIVIL LAW HARMONIZATION BILL, NO. 1

#### DOCUMENT TABLED

**Hon. Pierre Claude Nolin:** Honourable senators, under rule 28(4), I request leave to table a document.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Nolin:** Honourable senators, I am tabling with the Clerk, as an integral part of the work of this House, a copy of a magazine article that appeared in 1988, entitled "Meech Lake: Conflicting Views of the 1987 Constitutional Accord."

• (1350)

[English]

### SIR JOHN A. MACDONALD DAY AND SIR WILFRID LAURIER DAY BILL

#### REPORT OF COMMITTEE

**Hon. Michael Kirby,** Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Thursday April 26, 2001

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

#### FOURTH REPORT

Your Committee, to which was referred Bill S-14, An Act respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day, has, in obedience to the Order of Reference of Tuesday, February 20, 2001, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

MICHAEL KIRBY  
*Chair*

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Kirby, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

### CONFERENCE OF MENNONITES IN CANADA

#### PRIVATE BILL TO AMEND ACT OF INCORPORATION— REPORT OF COMMITTEE

**Hon. Lorna Milne,** Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, April 26, 2001

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

#### THIRD REPORT

Your Committee, to which was referred Bill S-25, An Act to amend the Act of incorporation of the Conference of Mennonites in Canada, has, in obedience to the Order of Reference of April 4, 2001, examined the said Bill and now reports the same with the following amendment:

(a) on page 1, by replacing lines 27 to 29, with the following:



**"2. Sections 1 to 5 of the Act are replaced by the following:**

1. (1) The Corporation created by chapter 91 of the Statutes of Canada, 1947, is continued as a body corporate under the name "Mennonite Church Canada".

(2) The Corporation consists of those congregations of Mennonites and conferences of Mennonites that are corporate members of the Corporation on the coming into force of this Act and such other congregations of Mennonites, conferences of Mennonites or other entities as may become corporate members thereof.

2. (1) The head office of the Corporation"; and

(b) on page 2, by replacing line 6 with the following:

**"3. (1) Subject to this Act, the Corpor-"**

Respectfully submitted,

LORNA MILNE  
*Chair*

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Milne, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

## QUESTION PERIOD

### NATIONAL DEFENCE

#### REPLACEMENT OF SEA KING HELICOPTERS— INDEPENDENT LEGAL ADVICE ON DISPUTE BETWEEN EH INDUSTRIES AND GOVERNMENT

**Hon. J. Michael Forrestall:** Honourable senators, I wish to clarify a question I asked yesterday. I am not sure whether I owe the Leader of the Government in the Senate an apology. It is with regard to her response to my question with respect to seeking legal counsel among the recently retired judiciary on the procurement process and on the decision that had been handed down and whether the government had sought similar advice with respect to the Maritime Helicopter Project, not the search and rescue program. If I misunderstood her, I apologize. If it was in fact the Maritime Helicopter Project, then we were both on the same topic, and I wonder if she is in a position to answer the question.

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for that. I understand that the question was with respect to the Maritime Helicopter Project.

**Senator Forrestall:** I will have a look at that. I do extend my apologies for having misunderstood yesterday.

### POSSIBLE SALE OF PORTION OF CFB SHEARWATER

**Hon. J. Michael Forrestall:** It has come to my attention, honourable senators, that the Department of National Defence is about to sell off 1,000 acres of Canadian Forces Base Shearwater, including the main north-south runway, and that it is then to become a four-lane highway for the metro region. Many of you will realize that the end of that runway is virtually out in the Atlantic Ocean, and that therefore it is pretty hard for that to be in the midst of Metro Halifax.

In my opinion, of course, it is a very shortsighted proposition. The north-south runway is bisected by the east-west runway, which is used primarily by Sea Kings. This would eliminate any future possibility for an international air show, the continuation of what has become one of the finest air shows in Canada, and an air show which attracts hundreds of thousands of people to that part of the region. Could the Leader of the Government shed some light on this issue? Could she tell us whether the project is to go through, and what position the government is taking with respect to the future economic development of that area for the benefit of the surrounding community?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I have many fond memories of the Shearwater base when it used to be the centre for the entire airforce for Nova Scotia and more particularly for Halifax when I was a child. That is where we went.

As to the specific question, I am afraid I do not have an answer, but I will try to obtain it for the honourable senator.

**Senator Forrestall:** Would the minister be kind enough to have conversations with her colleagues and use her not inconsiderable influence not only as the Leader of the Government in the Senate but as a very prominent Haligonian to ask him to block, if he would, the runway transfer before it is too late? As I have suggested, it will be a major impediment to economic growth. Beyond that, to develop what could be a four-lane highway through highly built-up residential communities with an extraordinary large number of younger children would seem to me to constitute an unparalleled risk for those who live nearby, and I cannot imagine where the highway would come from or go to.

• (1400)

**Senator Carstairs:** Honourable senators, as the honourable senator knows, decisions concerning highway construction are primarily made by provincial governments and not by the federal government. I am familiar with the Eastern Passage area, the area through which this potential highway would go. I will speak to the honourable minister.

## DEFENCE AND SECURITY COMMITTEE

## REQUEST FOR DATE OF ORGANIZATIONAL MEETING

**Hon. Michael A. Meighen:** Honourable senators, my question is directed to either the Deputy Leader of the Government in the Senate or to the Leader of the Government in the Senate. I am sure both have the answer. I am asking this question to assist our shy and retiring colleague Senator Rompkey, who is too embarrassed to ask.

Could the minister or her deputy tell us when the organizational meeting of the newly constituted and established Defence and Security Committee might be called?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I am afraid that is not a question that the Honourable Deputy Leader of the Government can answer. Thus, I will answer for him.

It is our intention to call an organizational meeting of the committee as soon as possible. An organizational meeting of the Human Rights Committee will take place on Tuesday next. However, one of the participants on the committee about which Senator Meighen asks will not be here next week. I refer to Senator Kenny. I hope to delay that meeting until he returns. However, if I see an urgency arise, I will call the meeting for early next week.

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw to your attention the presence in our gallery today of the participants in the Forum for Young Canadians, many of whom you met this morning.

Welcome to the Senate of Canada.

**Hon. Senators:** Hear, hear!

[Translation]

## ORDERS OF THE DAY

## BUSINESS OF THE SENATE

**The Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, we would like to start with Item No. 1, moving to No. 4 and then to revert to Orders of the Day as they stand, namely Items Nos. 2, 3, 5, 6 and 7.

As well, honourable senators, this being the last sitting at which we will be able to discuss Bill S-4, and since a number of senators have indicated a desire to speak, if the time normally allocated for a speech has been exceeded, I will be obliged to refuse any extension, in order to allow all those wishing to speak to have time to do so.

FEDERAL LAW-CIVIL LAW  
HARMONIZATION BILL, NO. 1

## THIRD READING

On the order:

Resuming debate on the motion of the Honourable Senator De Bané, P.C., seconded by the Honourable Senator Poulin, for the third reading of Bill S-4, A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law;

And on the motion in amendment of the Honourable Senator Grafstein, seconded by the Honourable Senator Joyal, P.C., that the Bill be not now read a third time but that it be amended,

(a) on page 1, by deleting the preamble; and

(b) in the English version of the enacting clause, on page 2, by replacing line 1 with the following:

“Her Majesty, by and”,

And on the motion in amendment of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Moore, that the Bill be not now read a third time but that it be amended in the preamble, on page 1, by replacing lines 5 to 7 with the following:

“Province of Quebec finds its principal expression in the *Civil Code of Québec*”;

And on the motion in amendment of the Honourable Senator Moore, seconded by the Honourable Senator Joyal, P.C., that the Bill be not now read a third time but that it be amended in the preamble, on page 1, by replacing lines 15 and 16 with the following:

“two major legal traditions gives Canadians enhanced opportunities worldwide and facilitates ex-”.

**Hon. Joan Fraser:** Honourable senators, in response to Senator Murray's most diplomatic suggestion, I would like someone from the government side to reply to the questions raised by Senator Watt.

[English]

I am delighted to reassure Senator Watt that the bill we are discussing does not refer to a single Quebec people. It refers simply to the unique character of Quebec society in the context of civil law, the civil law tradition. The civil law of Quebec, of course, applies to everyone who lives in Quebec, whatever that person's language, ethnicity or other affiliation.



I am delighted to say that this bill does not affect Aboriginal rights in any way. It does not affect the Indian Act or any other federal law or any other law of any kind affecting Aboriginal people. It does not affect the bylaws of Indian bands. It does not affect customary law. It certainly does not affect section 35 of the Constitution Act, which of course would take a constitutional amendment. Thus, I argue that a non-derogation clause is not needed.

All this bill does is adjust the vocabulary of certain federal acts to ensure that they take into account both the common-law tradition and the civil-law tradition within Quebec. Thus, the courts and all ordinary Canadian citizens may understand with perfect clarity exactly what it was that the federal legislature meant. This has not been the case with some pieces of federal legislation until now.

For example, honourable senators, this bill affects only things like the Federal Real Property Act, the Bankruptcy and Insolvency Act, the Crown Liability and Proceedings Act and other matters of that nature. It has absolutely nothing to do with Aboriginal rights in any way. In no way does it impinge on Aboriginal rights or the identity of Canada's Aboriginal peoples. I would have great difficulty supporting it if it did so.

Honourable senators, I do support this bill. I believe it is appropriate in this context to recognize the unique character of Quebec society as shown in the civil-law tradition, which is all we are talking about here.

**Hon. Lowell Murray:** Honourable senators, we are labouring under a real time limitation today. Therefore, honourable senators will understand that I am cutting my speech down to size as we go.

Yesterday, just before adjournment, Senator Moore rose to affirm the uniqueness of Nova Scotia's history and culture. Why? So that he could deny and reject the simple recognition of Quebec's uniqueness in the preamble to this bill. Is that what this debate is coming to? Is that what the country is coming to, a zero-sum game in which what may appear to be a small symbolic gain for one part of the country must necessarily be seen as a loss for another part of the country? This zero-sum mentality is the kind of thing that will bring the country down.

I am saddened by this debate, honourable senators. I am saddened by its echoes of similar, unnecessarily divisive debates in the past. What is it all about? A simple preambular reference to the effect that the civil-law tradition of Quebec reflects the unique character of that society.

Several honourable senators have seized this issue as an occasion to launch a full-blown constitutional debate that is grossly disproportionate and out of context to the measure that is now before us. These senators are guilty of overkill.

We had a resolution in the Senate in 1996 to affirm the distinctiveness of Quebec society. We said that Parliament and the executive ought to be guided by this concept.

[Translation]

Yesterday afternoon, Senator Joyal was quick to point out, on a question of privilege, that he was not a member of the Senate

when we debated the resolution on the distinct society, in 1996. However, the Honourable Serge Joyal had taken a stand long before 1996, in fact in 1986, in support of constitutional recognition of Quebec's distinct character.

During the 1980s, Senator Joyal was the chair of the Commission politique of the Quebec wing of the federal Liberal Party. In that capacity, he was interviewed in 1986 by the daily *Le Devoir*. I kept the article, which was entitled "Joyal: repair the wrong and fulfil the promise made by Trudeau at the referendum."

In his article, journalist Pierre O'Neill relates how Senator Joyal presided the parliamentary committee on the patriation of the Constitution in 1981-82 and says:

With the passage of time, he now recognizes that at the time the Trudeau government shocked, upset, disturbed and traumatized Quebec nationalists, and even thousands of Quebec federalists for not having been able to improve Quebec's status to reflect its fundamental concerns.

Today, it is in the context of repairing the wrongs that Mr. Joyal defines the new constitutional policy of the federal Liberal Party.

Mr. O'Neill then lists the components of that policy. The first one was:

That the preamble of the Canadian Constitution recognize the distinct character of Quebec and the linguistic duality of the Canadian federation.

• (1410)

Honourable senators, it seems to me that the preamble of Bill S-4 recognizes the unique character of Quebec and bilingualism.

[English]

It is perfectly in accord with the position that my honourable friend took as head of the Commission politique in 1986. In this debate, honourable senators, the finest semantic distinctions have been dressed up and sent into battle to masquerade as substantive arguments. The *Oxford English Dictionary*, for goodness sake, has been invoked, and *Petit Robert*. For what? It is for a discussion about the meaning of the word "society" or "société." We find the following peculiar exchange at the Constitutional and Legal Affairs Committee meeting on March 14, 2001, involving Senator Joyal, Senator Cools and the Minister of Justice:

**Senator Joyal:** It is the word "society," Madam Minister.

**Senator Cools:** The problem is the word "society," Madam Minister.

**Ms McLellan:** Well, "society" is a neutral word, is it not?

**Senator Joyal:** No, it is not.



[Translation]

Honourable senators, during that same meeting, Senator Joyal himself defined what he means when he says that expressions such as distinct society:

...give rise to two other concepts, namely those of "people" and "right to self-determination," because if we distinguish them we form a different people and if we form a different people, it is entitled to a different state.

[English]

Honourable senators, how does that follow? How does it follow that the concept of a distinct society within Canada or, for that matter, the unique character of Quebec society, leads necessarily to the concept of "people, nation autodétermination puis séparation"? This is nonsense. It exists only in the mind of the honourable senator and his friends.

In any case, the idea of a constitutional recognition of the distinct society of Quebec is something that the federalists in Quebec have always wanted, simple recognition in the Constitution.

Mr. Trudeau's name keeps coming up. I suppose, if the devil can quote scripture, Senator Nolin and I can quote Mr. Trudeau. Indeed, Mr. Trudeau was never confused about the distinction between these terms: "société, peuple, nation."

[Translation]

I have before me the minutes of a very relevant exchange between Prime Minister Trudeau and the Premier of Quebec, René Lévesque, at a federal-provincial first ministers conference on the Constitution, in September 1980. René Lévesque had proposed a preamble to the Constitution, the fourth paragraph of which read as follows:

Recognize the distinct character of the Quebec people who, with their francophone majority, form one of the cornerstones of the Canadian Constitution.

To which Prime Minister Trudeau replied, and I read from the minutes:

**THE CHAIRMAN:** Just two words in reply. A conciliatory gesture. Your text, brilliant though it be —

That was Mr. Trudeau's way of complimenting Mr. Lévesque:

— is not bad. In your fourth paragraph, if you were to remove the word "people" and replace it with the word "society," I would probably find that acceptable; or, if you are bent on keeping the word "people," allow us in turn to speak about the Canadian people and we could talk about the Canadian people, the Quebec people, and the Acadian people.

[ Senator Murray ]

So, that is an initial compromise —

[English]

I make the point simply to reinforce that Mr. Trudeau was not confused, it seems, about the distinction and made the distinction between these terms "société, peuple, nation" and so on. However, Senator Joyal reminds me of the late Lyndon B. Johnson's domino theory, that unless he kept the army in South Vietnam, all of southeast Asia would fall, one after the other. So it is with Senator Joyal. If you dare mention the word "société" about Quebec, why that leads to "peuple," it leads to "nation," it leads to "autodétermination," it leads to "séparation." It does not make sense, honourable senators.

I had intended to sprinkle my speech with quotes from Senator Carstairs about the distinct society, from her days as Liberal leader in Manitoba. I have her book. Her book is entitled *Not One of the Boys*. My copy is very well thumbed and very well marked. I lent it to Senator Fraser, who did not wish to put out the money to buy a copy of her own. Unfortunately, Senator Fraser has not returned my copy in time for this debate.

Senator Joyal has said that the phrase "unique character of Quebec society" is a socio-political concept. I say, with respect, so what? We have put such phrases in preambles before. That it is still the subject of debate in the country, yes, it is. Since when has that stopped Parliament from declaring itself, whether it be on the Official Languages Act or whatever?

[Translation]

On April 3, Senator Joyal said, and I quote:

...the concept ... excludes, by its very definition, the groups that make up Quebec's society or identity as we understand it.

[English]

How can a simple reference that the civil law tradition is a component of the unique character of Quebec possibly be invested with some ethnic significance? How can it possibly be pretended that it carries with it some connotation of ethnic exclusivity? It does not. This is fear-mongering, honourable senators. Honourable senators, I say that the debate on this matter has been unnecessary. I say that the amendments we are concerned with from Senator Joyal and Senator Grafstein are unnecessary.

[Translation]

Honourable senators, I say, particularly to the senators opposite, that we must not have any illusions about what is at stake in this debate. Now that they have dragged us into this debate through these amendments, they are asking you to do what you have never done, even in the dark days of the debate on the Meech Lake Accord. They are asking you to formally reject the concept of the distinct character of Quebec.

[English]

What a gift for Bernard Landry. Do not do it. Do not do it. Now that they have forced the issue upon you unnecessarily, stand and proclaim that your Canada includes the province of Quebec with its unique character.

**Hon. Serge Joyal:** Honourable senators, I should like to submit to my honourable colleague a certain number of proposals.

• (1420)

**The Hon. the Speaker:** Honourable senators, I must be clear before we proceed. There is approximately one minute left in Senator Murray's time for a question, if that is what you wish. I am not sure from the list of speakers whether the honourable senator is entitled to speak again.

On the list of speakers I have Senator Cools, followed by Senator Bolduc, Senator Grafstein, Senator Beaudoin and Senator Andreychuk. I will take additional names from those wishing to speak. However, I need to know whether an honourable senator is asking a question or speaking.

The minute remains if Senator Joyal wishes to use it for a question.

**Senator Joyal:** Perhaps His Honour would add my name to the end of the list, and I will speak then. Yesterday my name was mentioned 17 times by the Honourable Senator Nolin. During his intervention, Senator Nolin mentioned the name of Senator Grafstein 21 times. My honourable colleague Senator Murray has mentioned my name 27 times today.

In all fairness, due to the frequency of my name in the record of the Senate, I should like to offer a minimum of explanation to the allegation that the senator has been proposing today. However, I do not want to pre-empt the rights of my honourable colleagues who are on the list because some of them have not spoken.

I enjoyed the leniency of the chamber when I made my major intervention. If His Honour would add my name to the end of the list, I should like to have more than one minute to answer what has been said by the previous speakers, in all fairness.

**Hon. Anne C. Cools:** Honourable senators, I rise to speak today on Bill S-4, to harmonize federal law with the civil law of the Province of Quebec and to amend certain acts in order to ensure that each language version takes into account the common law and the civil law. In particular, I wish to support the amendments to and/or the deletion of the preamble to this bill. I agree with Senator Jeremiah Grafstein and Senator Serge Joyal in their concerns about the legal impact of the preamble and its words "the unique character of Québec society."

I listened carefully to Senator Lowell Murray. I understand that Senator Murray's position arises from the fact that he was once the minister responsible for this particular area. At that

time, this was his position and that of the Conservatives. Therefore, I understand what is being said. As honourable senators will recall, Liberals had enormous problems with the concept of "distinct society."

Honourable senators, the magnitude of Bill S-4 combined with the differing conceptual frameworks of the Quebec civil law and the common law have made comprehension and study of this bill difficult. They keep saying "civil law." They should be saying "roman law." Further, when Minister of Justice Anne McLellan appeared before the Standing Senate Committee on Legal and Constitutional Affairs on March 14, 2001, she informed us that Bill S-4 was the first of several bills that will harmonize federal law with the Quebec Civil Code. She gave no indication of the contents of those future bills or the effect of those future bills on this first one. The minister has asked honourable senators to take her and the government on faith and to pass this bill without knowing what the future bills will contain, that is, to pass the first of several bills with no knowledge or insufficient knowledge of the bills following.

Honourable senators, Bill S-4 is an omnibus bill that will amend 49 federal statutes. Its preamble is most unusual, all the more so since it is an omnibus bill. That unusualness lies in the fact that this preamble appears to cloak this omnibus bill in an air or a sense of constitutionality. Being well acquainted with the parliamentary experiences around the collapse and defeat of the Meech Lake Accord on June 22, 1990 and the Charlottetown Agreement on October 26, 1992, and also the social and political divisions and the conflicts so engendered, I submit that this preamble is ill-conceived, unwise, and ill-placed, if not misplaced, in this bill.

Honourable senators, during our Senate committee's study of Bill S-4, some senators expressed enormous difficulty with the preamble's substance, form and legal intention. One portion that was especially troubling is the preamble's second paragraph. It reads:

WHEREAS the civil law tradition of the Province of Quebec, which finds its principal expression in the *Civil Code of Quebec*, reflects the unique character of Quebec society;

The words "the unique character of Quebec society" caused some Liberal senators much anxiety, in particular Senators Joyal, Grafstein, and myself. The government told us that the words of the preamble were based on both the Calgary Agreement of September 14, 1997 and the parliamentary "distinct society" resolution of 1995. The "distinct society" resolution of 1995 was introduced in the Senate by the then Government Leader, Senator Fairbairn on December 7, 1995. It read in part:

Whereas the people of Quebec have expressed the desire for recognition of Quebec's distinct society;

I have the quotation in my speech. I shall not bother to repeat the entire thing. It has been read many times.



The Senate adopted this resolution on December 14, 1995 without a recorded vote. That absence of a recorded vote is a significant fact. For myself, I left the chamber during the vote. I also wish to state here again for the record that I did not speak in that debate. The reason was that I did not support it. I did not then, and I do not now support the concept of the "distinct society" as an independent, legal concept capable of collecting new distinct meanings. In response to those who claim that resolution as the guiding purpose, I must remind them that this resolution is of no force or effect. Such a parliamentary resolution is of effect only during the life of that Parliament and has no force and effect after its dissolution. Consequently, it is of no effect in our deliberations on this bill.

Honourable senators, Senator Pierre Nolin's speech of yesterday took issue with my assertion of a well-established fact of Parliament and the life span of parliamentary orders and resolutions, particularly the life span of the force of this distinct society resolution of 1995. Simultaneously, Senator Nolin raised the issue of Prime Minister Jean Chrétien's recent reliance on the 1919 Nickle Resolution to veto Conrad Black's proposed appointment to the House of Lords in the United Kingdom. Senators will recall that I spoke to my inquiry on Mr. Black here in the Senate on November 4, 1999. I shall respond to Senator Nolin by citing some authorities. The first authority is our learned former colleague Senator John Stewart in his 1977 book *The Canadian House of Commons Procedure and Reform*. I would submit, honourable senators, that Senator Stewart knew something about Parliament. John Stewart wrote:

The fact that the House is an active body only during a session is also of great importance in the conduct of parliamentary business. On the one hand it means that a new beginning must be made in each session: no bills and no motions carry over.

I repeat: "no bills and no motions carry over." Bills and motions must become acts of Parliament to acquire permanence, the kind of permanence of which Senator Nolin is speaking. I would have thought that the mere fact that these sentences have made their way into a statute, though only in a preamble, would indicate that permanence is being sought and that the previous resolution had been unsatisfactory, insufficient and incomplete.

The second authority is former Conservative Prime Minister Robert B. Bennett. For Senator Nolin's sake, I shall cite Prime Minister Bennett, first as a Conservative, and second, because Prime Minister Bennett's words are about the Nickle Resolution and its expiration on dissolution. I thought I would please Senator Nolin doubly. Remember that the Nickle Resolution was passed in 1919. Prime Minister Bennett was speaking in 1934. Speaking about the Nickle Resolution and the life of resolutions, on January 30, 1934, Prime Minister Bennett said:

It has been a matter of passing comment, as pointed out by an eminent lawyer not long ago, that a resolution of a House of Commons which has long since ceased to be, could not bind future parliaments and future Houses of Commons.

He continued:

The power of a mere resolution by this house, if acceded to, would create such a condition that no principle which secures life or liberty would be safe. That is what Judge Coleridge pointed out.

• (1430)

Honourable senators, we must understand the kind and quality of permanence of which Senator Nolin speaks. A resolution would have to be agreed to threefold because the actions of a chamber usually take the form of a motion; they are either orders or resolutions. Every bill entails so many motions and resolutions, but to have permanence a resolution must be agreed to by this house, the House of Commons and Her Majesty, that is an act of Parliament. They are all resolutions.

**Senator Nolin:** You are wrong.

**Senator Cools:** Simply to assert that I am wrong is insufficient. You must prove it. I invite all senators to check my references.

In addition, the previous year, on May 17, 1933, Prime Minister Bennett had also stated clearly that the Nickle Resolution was of no force, saying:

...it being the considered view of His Majesty's government in Canada that the motion, with respect to honours, adopted on the 22nd day of May, 1919, by a majority vote of the members of the Commons House only of the thirteenth parliament (which was dissolved on the 4th day of October, 1921) is not binding upon His Majesty or His Majesty's government in Canada or the seventeenth parliament of Canada.

On January 30, 1934, in speaking about his responsibility as Prime Minister to advise the King, and about his reviving the King's honours, Prime Minister Bennett said:

The action is that of the Prime Minister; he must assume the responsibility, and the responsibility too for advising the crown that the resolution passed by the House of Commons was without validity, force or effect with respect to the sovereign's prerogative. That seems to me to be reasonably clear.

Honourable senators, it is odd and provocative that the government should draft into a statute, even in a preamble, resolutions that have no legal or parliamentary force, particularly when those resolutions are divisive to the nation and the government's own supporters. I ask the Senate to ponder the necessity and wisdom of this preamble, particularly the words "unique character of Quebec society."

Honourable senators, I shall now examine the definition, use and legal purpose of preambles in bills. The renowned legal text *Jowitt's Dictionary of English Law* defines a preamble, stating:



The preamble of an Act of Parliament is that part which contains the recitals showing the necessity for it. It, unlike the marginal notes (q.v.), is part of the statute and may be used in order to ascertain the meaning, ...but only when the preamble is clear and definite in comparison with obscure and indefinite enacting words...

Every lawyer is this chamber understands what "indefinite enacting words" means.

Jowitt's definition continues:

The preamble serves to portray the interests of its framers, and the mischiefs to be remedied, and is a good means to find out the meaning of the statute.

Further, this provocative legislative drafting action of placing the words "unique character of Quebec society" in this bill's preamble has the effect of submitting these words to our courts for judicial interpretation and judicial elaboration. Some argue that the phrase "unique character of Quebec society" has no meaning in law or that it only reflects and recites the experiential history of Quebec. I submit that these words do have a meaning and that the meaning is legally flexible and will result in many and huge problems. It is wiser in law to enact no preamble at all than to enact a legally, politically and judicially malleable, nay mercurial, preamble.

Honourable senators, I have always opposed and will continue to oppose the legal use of the term "distinct society" — not the concept of people conducting their lives as they see fit, but the use in law of the term "distinct society" — or any equivalent term intended to have the same legal and constitutional consequence and effect. Liberal senators here know the enormous difficulty that the term "distinct society" has caused us. Liberal senators will know the pivotal role that our former Liberal Prime Minister, the late Pierre Elliott Trudeau, played in this country on this question. Mr. Trudeau opposed it to the day he passed away. He was right then and is still right now.

I wish to place on the record one relatively recent newspaper account of Mr. Trudeau's perpetual and abiding opposition to the legal use of the term in legal and constitutional drafting. I speak of the January 10, 1997, *Calgary Herald* article headlined "Trudeau says distinct society status flawed." It reported:

Former Prime Minister Pierre Trudeau has sharply criticized both federal and provincial Liberals for endorsing "distinct society" status for Quebec.

In an interview with the editors of *Cité Libre*, Trudeau said federalists are wrong to suggest that the "distinct society" status for Quebec would help to protect French-Canadians in Canada.

"I think that they're not aiming for the equality of francophones and anglophones, but rather for the superiority of one language over another in one province," Trudeau said.

What's more, they're "looking to obtain privileges that others don't have. They want to increase, in a fashion I would call politically pernicious, a democratic and parliamentary disequilibrium."

Prime Minister Jean Chrétien and federal Liberals have endorsed the idea that Canada's 1982 Constitution should be rewritten to declare Quebec a "distinct society."

**The Hon. the Speaker:** Honourable senator, with apologies, your time has expired.

[Translation]

**Hon. Roch Bolduc:** Honourable senators, I will be very brief, since it seems to me that everything there is to say has been said about this bill. My only comment will be to contrast two attitudes I find hard to accept, because they reflect values that are probably common but misinterpreted.

The first is the attitude of the Premier of Quebec, who constantly refers to Quebec as a nation. We hear that every day. I feel it is ambiguous. While hesitant to do any anthropological dance of the seven veils here, I do recall that in my youth the concept of nation for us meant an ethnic group, namely the French Canadians of Quebec, people like myself whose ancestors had come here a very long time before. In my case, 353 years before. In the village of my birth, this group included 100 per cent of the population.

In Quebec there are some six million such people, but there are another one million or more as well. These include, of course, the Aboriginal people from the various first nations, along with those whose ancestors were English — a very sizeable group — Irish and Scottish, and all the others from just about every country in Europe. These include the Germans, the Greeks, the Italians, the Spanish, and then there are the more recently arrived groups from the Maghreb, the Middle East, Latin America, the Caribbean and Asia.

As a result, with my traditional understanding of the concept of a nation, a nation as I understood it to mean when I was a school child, I have trouble speaking of the nation of Quebec. For me, that is not a reality. It is a complex matter, and does not translate what I learned as a child.

On the other hand, if Mr. Landry, like Minister Dion by the way, is referring to the sociological meaning of the nation as state, or what Mr. Bouchard meant when he used the word "people," that is another matter. I believe, however, that the majority of the French Canadians of Quebec — and this is important — consider the nation to which Mr. Landry refers as their own ethnic group. This is, moreover, why other Quebecers cannot accept it, and rightly so! I am convinced that Senator Lynch-Staunton, who is very much attuned to these questions and who knows and understands Quebec very well, will corroborate this. I am trying to give you a picture of the "heart of French Canada."

● (1440)

The other attitude is that of Senators Joyal and Grafstein, who claim to draw on Mr. Trudeau, whose thinking I admit I cannot understand. This attitude involves denying the existence of the specific character of Quebec, with its population of six million French Canadians, who have lived there for a long time and still hope to obtain this constitutional recognition and who want to protect their future with 300 million anglophones surrounding them.

Here, that is not the issue. In the guise of cold legal logic, it seems to me to reveal an excessively rigid attitude that should not prevail in the Senate. There is no need for such thin skins. There is no call to be "more Catholic than the Pope," as we say at home.

The Supreme Court and Parliament have spoken on this matter. I know well that we are equal, we all hold to this value of equality. There is no debate on this point, and we all agree. As Senators Beaudoin, Nolin and Murray have demonstrated, accepting the second paragraph of the bill's preamble does not require sacrificing the principle.

There are two attitudes here. On the one hand, there is the Quebec stubbornness expressed by Mr. Landry, who talks of the "Quebec nation." Basically, this expression is ambiguous and means nothing. On the other hand, there is a sort of block. In the case of Senator Joyal, I think it is strictly for reasons of cold legal logic. In the case of Senator Grafstein, it is more the typical reaction of a certain English Canadian milieu, which I understand very well. These two attitudes are, in my opinion, a little too rigid. That is the essence of my remarks.

I thank particularly Senators Carstairs and Milne for their courage in this matter and of course Senators Murray and Kinsella, whose political sensitivity I have long known.

[English]

**Hon. Jeremiah S. Grafstein:** Honourable senators, all the witnesses agreed that the legislation before us, Bill S-4, can stand on its own without any preamble. That is unquestioned. All agreed, or some agreed, that the preamble is not necessary. Where there is substantive disagreement is with regard to the weight and the interpretive power of the preamble. Are the words divisive? Are they confusing? Are they misleading? Are they clear?

Senator Murray's most interesting speech confirms the explosive nature of these words, whether he agrees or not with those of us who take a different interpretation from those words. The words themselves tend, as his speech indicates, to be explosive.

Let us try to be legalistic. This, after all, is a law. Let us turn, if we could, to the Interpretation Act, section 13, which is pretty clear. It states that:

The preamble shall be read as part of the enactment intended to assist and explain the purport and the object.

Therefore, the preamble is not a simple statement.

Senator Nolin made reference to a very distinguished legal witness. I refer to page 667 of the *Debates of the Senate*, where Senator Nolin quotes the witness:

We also have to know that the preamble of a law has no normative scope and grants no new individual or collective rights. In a way, it is a simple statement.

That statement, honourable senators, simply is not correct in law. Again, the preamble to the Interpretation Act reads:

The preamble of an enactment shall be read as part of the enactment intended to assist and explain its purport and object.

The disagreement lies in what weight or what meaning we should give to the words of the preamble. I say this again despite all the admonitions from speakers who support this legislation unamended. If senators have a reasonable doubt as to the meaning of words, those words should be deleted. Let us start again with the preamble, honourable senators, which I believe is replete with doubts and which will, if we allow it to go forward, be incorporated into the legislation. All agree it is unnecessary because the enactment itself can stand on its own. Therefore, I will not today — because do I not have the time and I will not take the time of the Senate — make a seriatim response to Senator Nolin because I disagree with almost every one of his conclusions. Time does not allow me to make a detailed legal response to each of his conclusions. Let me, however, touch on one or two matters.

The first recital, at the very outset, refers to "all Canadians." As I have indicated, this is unclear. Senator Kinsella had some doubts about this. The word "Canadians" has been interpreted by the Supreme Court of Canada in the *Singh* case. That case made it clear that there is a marked differentiation, for instance, between a Canadian citizen — a Canadian resident, if you will — and "everyone." The heart of our Charter applies in part to "everyone." Therefore, to start a legal bill with "all Canadians," using a dictionary meaning rather than a legal meaning — and there is a difference between the two — to my mind is inappropriate for a legal bill. If there is a doubt that "all Canadians" excludes anyone, a person, a landed immigrant, a refugee, it should not be in that legislation if the law itself is meant to apply to everyone within the boundaries of the province of Quebec, as I believe it does. Therefore, if there is a doubt, I suggest that at the very outset this serious doubt should be removed.

The second recital requires a more detailed response. In effect, this recital states that the Civil Code of Quebec reflects the unique character of Quebec society. We heard a very eloquent statement yesterday from Senator Watt. To Senator Watt, a very distinguished leader in his community, the Aboriginal community in the north of Quebec, these words "distinct society," let alone "unique society," are unclear. Is he included? Is he excluded? It is unclear. If in fact the Aboriginal community in and for the province of Quebec has a serious doubt, why should we not share that doubt and remove words that have no impact on the legislation itself? Why not?

[ Senator Bolduc ]



Senators may recall — and I am not a civilian lawyer — that Senator Bolduc made reference to the Anglo-Saxon tradition. I was brought up in the common-law tradition, but I have had pause to reflect on the long, tangled and complex history of the origins of the law in the province of Quebec. First, there was a seigneurie law, then the *Coûtume de Paris*, then the common law, then the French common law in French, then the French common law in English. At the time, there were only three geographic districts, in Quebec, Montreal and Trois-Rivières. Quebec law did not extend to all of the regions of Quebec until 1898, and then finally in 1911. Even to this day, there remain questions as to the impact of the law in Rupert's Land, the Aboriginal community in northern Quebec.

There are questions about this issue to this day, and the questions with respect to the seigneurie law still exist. By the way, that was part of the evidence as well.

There was a common-law influence on the Civil Code and there was a Civil Code influence on the common law. That is unquestioned.

I recall that I had somewhere read the word "unique" as it relates to the Canadian tradition.

• (1450)

I did find the word "unique" in an interesting small series of lectures given by the late Bora Laskin and compiled in *The British Tradition in Canadian Law*. In this book, which I commend to all senators, is a very interesting and detailed discussion of the differences of the law within the province of Quebec, but then he turns to the word "unique." I will quote from this book very briefly. He was referring to the court system because what is unique about Quebec is that federal judges are appointed by a federal authority. He stated at page 111:

There are two features of the judicial provisions of the Canadian Constitution which have uniqueness. First... courts are to be federally appointed...

Further on, he says that the second uniqueness is the conferring of power upon the Parliament of Canada to establish courts for the better administration of laws in Canada. The phrase "laws in Canada" has been interpreted to mean federal law only, but not to include laws in force in Canada through provincial enactment. He goes on to say there is no reason in principle why it should not also include common-law or civil-law principles which were in force at Confederation and which afterwards could only be dealt with by federal legislation and the distribution of legislative power affected by the Constitution.

Indeed, the Canadian legal system is unique and unparalleled because of this unique power that Parliament, through the Constitution, has granted to appoint federal judges in every province. A federally appointed judge can deal with both provincial law and federal law. That is unique; that is undoubted.

Honourable senators, I do not wish to belabour this point, but I do wish to come back to the point that the recital, as

constituted, is unnecessary and may in fact be historically incorrect. It is hard to encapsulate in a recital the essence and rich traditions of the civil law in Quebec, which have many roots.

With respect to the unique society and the resolution, Senator Murray talked about the resolution in this place. First, the resolution did not refer to unique society. It referred to distinctive society, and there is, on its face, a difference. If words count, those words certainly count.

Recently, the Prime Minister warned some of us about the dangers of such words as "sovereignty," "society" and "nation." He lamented the fact that these words were hijacked by separatists for their narrow sovereignist agenda.

Senator Bolduc makes exactly the same point when he refers to the word "nation." The Prime Minister warned us that we should not fall into the trap prepared by the separatists in the abuse of these words.

Honourable senators, do we do more than we intended here? Do we dare allow separatists to play these linguistic games as part of the federal legislative fabric? For those of you for whom there is a reasonable doubt, I urge you to support the amendments to delete it. Let me refer to the bill that our colleague Senator Nolin referred to us. How can the separatists play word games with these words? Read proposed section 8(1), of which we approve. Proposed section 8(1) is an amendment to the Interpretation Act and reads:

...it is necessary to refer to a province's rules, principles or concepts forming part of the law of property and civil rights, reference must be made to the rules, principles and concepts in force in the province at the time the enactment is being applied.

The Province of Quebec now has a separatist government. The Province of Quebec has the total power to amend the Civil Code of Quebec. If it can take this preamble and these words and justify a separatist agenda that we have passed today, then what are we doing? Why give the sovereignists and the separatists a federalist gift when it is unnecessary? It is unnecessary. If it were necessary, I would say, well, we have to think about it. We know as a question of law, as a question of fact, as a question of practice that the preamble in this legislation is unnecessary. Are we not making a grand statement by just reading the explicatory words that say we are in effect joining together in equality the common-law code and the civil-law code as they apply to the federal law in and for the province of Quebec? Is that not a magnificent, powerful statement of Canadian unity? What more do we need? Why give the sovereignists a free lunch? They will not give us anything for free.

Honourable senators, if you have a reasonable doubt, I urge you to delete these words. Follow the lament of the Prime Minister, who says that the separatists hijacked these words so that we could not use them in their normal course.

**Senator Cools:** Delete the words.



**Senator Grafstein:** I urge you, honourable senators, to support these amendments.

[Translation]

**Hon. Gérald-A. Beaudoin:** Honourable senators, on Tuesday, April 3, I rose to address Bill S-4. No one is opposed to the substance of this bill. Senator Grafstein suggested removing the preamble and he presented an amendment to that effect.

In my speech of April 5, I said that this would be a mistake and that we should keep the preamble. I will not revisit this issue. I should like to say a word on the amendment proposed by Senator Joyal, since I did not have an opportunity to comment on it. I have the utmost respect for his speech. He presented an amendment to the second whereas. His speech was well researched and instructive. I congratulate him.

However, I want to say that it is preferable to keep the second whereas in its present form. I will not repeat my speeches of April 3 and 5, because it would take much too long.

[English]

As I explained in my speech of April 5, Bill S-4 is not a constitutional amendment but rather a bill of the greatest importance. The second "WHEREAS" is based on history. It started in 1774 with the Quebec Act. That is a long time ago. History is important, and it is time to show it clearly in this house. Prime Minister Lord North introduced the Quebec Act at the Parliament of Westminster, and the bill was adopted in 1774. It reintroduced French civil-law legislation of the time in a British colony. This act, obviously, conferred a unique character to Lower Canada. In 1866, a civil code came into force in Lower Canada. The code is bilingual, and a new code in 1994 was adopted in Quebec and is bilingual.

The words in the preamble as it is, and this is where I disagree with those who have proposed an amendment, are used by many federalists and were inspired by history. Both Houses of the Parliament of Canada used similar expressions in a motion a few weeks after the referendum of 1995. For all these reasons referred to at length in my two long speeches, I suggest that we adopt Bill S-4 as it is.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I am almost sorry that Senator Murray did not quote me so I could quote things back. I will refrain from that this afternoon. I want honourable senators to know why I will be supporting the motion in amendment by the Honourable Senator Moore. I think we all got caught up with this other debate.

• (1500)

The amendment by Senator Moore essentially does the following: It changes the wording, gives Canadians a window on the world, and gives Canadians enhanced opportunities worldwide.

His wording, I would suggest, is a little more clear, perhaps less poetic than the original wording, and I wanted to put on the

record that, though it is not a significant amendment, I will be supporting it.

**Hon. A. Raynell Andreychuk:** Honourable senators, as a member of the Standing Senate Committee on Legal and Constitutional Affairs, I hesitated on whether to speak on this bill, but I felt I had to put on the record my disappointment in this process. We are losing sight of the importance of this bill. We have been attempting to better our law system with a harmonization bill for quite some time. Some very eminent scholars and lawyers have worked very diligently to put this bill together. When those experts came before the committee, it was probably the only time during my short tenure on the Standing Senate Committee on Legal and Constitutional Affairs that Senator Beaudoin, Senator Joyal, Senator Grafstein and Senator Moore — all lawyers — were hard-pressed to find questions to put to the witnesses.

While we did ask for explanatory comments, we were impressed from the start that this was not an exercise taken quickly. It was not an exercise hijacked by any group or ideology. It was a concerted effort of all the lawyers to harmonize the law in Canada.

The purpose of this bill, as has been stated, is the betterment of the law, as well as an example in global trade. The rest of the world may use Islamic law or the main civil or common-law systems. This harmonization bill could have profound effects in global trade and in other parts of the world. Canada would be at the forefront in this area.

It was with some pride that I listened to the scholars from the department and from the various faculties of law across Canada talk about how they put this bill together.

I am concerned that the same care that was taken in the bill was not taken in the preamble. For the life of me, I cannot believe that those who drafted the bill were also the same scholars who drafted the preamble. Surely the Government of Canada is responsible to ensure that a proper public policy debate is held on fundamental and important issues. Yet, recently, the government has taken to putting into preambles issues of extreme public policy knowing that they could and, in fact, do inflame various sectors of Canadian society. Instead of having an open, forthright debate on those issues, the issues are tucked into a preamble.

I am mindful that I spoke on Bill C-23, an act to modernize the Statutes of Canada in relation to benefits and obligations. That bill did speak to those issues but, at the eleventh hour, the minister put into the preamble a definition of marriage, knowing full well that the people of Canada are not united on that issue and that it demands a very serious public policy debate.

Again a phrase was placed in Bill S-4 that anyone should have known would have caused some consternation. Legitimately or otherwise, this phrase has caused differences of opinion in Canada.

The Government of Canada has a responsibility to bring people together to have a thoughtful debate, not a divisive debate. Look how quickly we have moved to a divisive debate. My words mean what I intend them to mean, nothing more, nothing less. Someday we will know what weight these words will carry for this legislation, for this issue of constitutionality and for us as citizens.

It pains me that the government does not learn from its lessons and continues to put fundamental debates into preamble. It is unnecessary and it is absolutely wrong in good governance.

Consequently, Senator Grafstein's amendment to delete the preamble makes sense to me because the preamble diminishes the quality of the rest of the bill. The amendment would send a signal back to the government. Our warnings on Bill C-23 went unheeded. We told them not to infiltrate into law via preamble important issues which should be debated by Canadians, while telling us that it means nothing or that it will only be interpreted narrowly.

In the Standing Senate Committee on Legal and Constitutional Affairs, we began by discussing the bill and everyone came prepared to do that, but the preamble quickly became the focus. We were told the preamble was simply complimentary, that it should not in any way attract a deeper debate. What happened? The debate very quickly degenerated to discussing only the preamble. What should have been simply an expression, an instruction, in a preamble, became an emotional issue which has existed in this country year in and year out. The debate will continue to go on, but it should never be slipped into a bill on such an important issue as harmonization.

The preamble detracts from and does a disservice to the value of the bill. I hope that the Government of Canada will rethink its strategy in utilizing preambles inappropriately. The government should measure its words in preambles in the same way that the courts measure words inside the bill.

**The Hon. the Speaker:** Senator Prud'homme, you are rising. I have a list which I read out earlier. My next speaker is Senator Joyal. Are you asking a question, however?

**Hon. Marcel Prud'homme:** No, I was not here when the list was read out.

**The Hon. the Speaker:** I will put you on the list.

**Senator Prud'homme:** Put me on the list. I will put as strongly as I can in one minute why I will vote for this bill, hoping that Senator Joyal will leave us some time.

**Senator Joyal:** Honourable senators, since the honourable senator has mentioned that he will speak for a short, brief period and since he has not spoken, I certainly would like to defer to him. I ask that he allow me the same courtesy — some time, to answer some of the attacks of which I have been the object.

[Translation]

**Senator Prud'homme:** Honourable senators, at some point we will have to define what Canada is. Senator Denis, who was a

minister and a member of Parliament, and who sat in Parliament for 54 years, used to say: "Some things are obvious."

Clause 2, which gets some senators all worked up, fits this description! Who am I here? I am a Canadian like everyone else, but I am very pleased to say that I have my own reality. The word "distinct" does not and should not mean in the minds of some "a scarecrow to chase people away." It should be a positive concept that could be used throughout the world to say: "We in Canada accept differences, nuances." If there is an obvious reality, it is Quebec!

[English]

• (1510)

I am always and forever a defendant of my friend Senator Watt. In Quebec, we recognize that there are 11 nations. If I have time I will name them all, without notes. There are 11 First Nations with more than 65,000 people in Quebec. I bow to that. I can tell Senator Fraser, Senator Angus and others, that I recognize constitutional rights in Quebec. I accept that as a reality of what Quebec is all about.

[Translation]

This is what is meant by the expression "distinct society," which seems to upset people so much. It does not mean what the péquistes, separatists, sovereignists or indépendantistes would have us believe! We are federalists, but we too are entitled to our pride!

[English]

I say to my friend, Senator Grafstein: Try to understand the pride of others if you want people to understand your own pride.

[Translation]

The reality of Canada, honourable senators, is very well described in the preamble. It is no more than an affirmation of what exists.

[English]

This is the reality. That is why Canada is so different.

I will now sit down and say I will vote or I will not vote for any amendment.

**The Hon. the Speaker:** I wish to ensure there is some time left for Senator Joyal, because I must rise at 3:15.

**Senator Joyal:** Honourable senators, in the three and one half years that I have been here, I have had the privilege of sharing with you opinions and ideas on very difficult issues. I remember Bill C-40, the bill dealing with the death penalty. I remember Bill C-20, which we dealt with last year, and many others. I particularly recall Bill C-23 which, as Senator Andreychuk mentioned, was a very difficult, moral bill.



I have always tried to put forward my opinion in neutral terms so as to not personally attack any senator. I believe that maintains a level of civility which is needed in the sometimes very heated and very emotional exchanges we have. I must say to my honourable friends, and to all their researchers and speech writers, that mentioning the name of a senator too many times in a speech makes it a little *ad hominem*, as I was told when I was in school. If we are to continue to maintain a level of frankness in our debates, that is an essential element that we should bear in mind.

That being said, I would say to Senator Murray that the objective of recognizing in a constitutional reform that which characterizes Quebec in Canadian society is a very difficult issue. I have tried to wrestle with that for 20 years. As chairman of the policy committee of the Liberal Party, I have proposed various approaches to this to my fellow citizens in the party. The one that Senator Murray alluded to was taken from 1986. I have that text. Senator Murray was courteous enough to inform me that he would refer to it. I will read the text, because each word is important:

[Translation]

Whereas it is essential, in a preamble that would be added to the Constitution of Canada to recognize, first, the commitment of Canadians to maintaining and strengthening, throughout Canada, the linguistic duality of the Canadian federation and, second, the distinct character of Quebec as a primary, but not exclusive, source of the French language and culture in Canada.

Still in the same preamble:

...the multicultural character of Canadian society and, in particular, respect for the diversity of origins, beliefs and cultures, as well as the various regional distinguishing features which make up Canadian society...

[English]

Fourth, the contribution of Canada's aboriginal people —

I think that the preamble is defective because it mentions only one element, while it should cover all of them. That is the proposal I made in 1996 to the same convention to recognize Quebec as —

**The Hon. the Speaker:** It being 3:15, pursuant to the order adopted by the Senate on April 24, I interrupt the proceedings for the purpose of putting all questions necessary to dispose of third reading of Bill S-4. The question is as follows: It was moved by the Honourable Senator De Bané, P.C., seconded by the Honourable Senator Poulin, that this bill be read a third time.

And on the motion in amendment of the Honourable Senator Grafstein, seconded by the Honourable Senator Joyal, P.C., that the Bill be not now read a third time but that it be amended,

(a) on page 1, by deleting the preamble; and

(b) in the English version of the enacting clause, on page 2, by replacing line 1 with the following:

“Her Majesty, by and”,

And on the motion in amendment of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Moore, that the Bill be not now read a third time but that it be amended in the preamble, on page 1, by replacing lines 5 to 7 with the following:

“Province of Quebec finds its principal expression in the *Civil Code of Québec*”;

And on the motion in amendment of the Honourable Senator Moore, seconded by the Honourable Senator Joyal, P.C., that the Bill be not now read a third time but that it be amended in the preamble, on page 1, by replacing lines 15 and 16 with the following:

“two major legal traditions gives Canadians enhanced opportunities worldwide and facilitates ex-”.

Accordingly, in the absence of an agreement, and in accordance with our precedents, we will now proceed to put the question on the last amendment, which was moved by the Honourable Senator Moore. I will repeat the amendment by Senator Moore.

It is moved by the Honourable Senator Moore, seconded by the Honourable Senator Joyal, PC:

That the Bill be not now read a third time but that it be amended in the preamble, on page 1, by replacing lines 15 and 16 with the following:

“two major legal traditions gives Canadians enhanced opportunities worldwide and facilitates ex-”.

Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Agreed.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Adopted. To be particularly clear about it, I will put the question again, as suggested.

The amendment before the chamber is the amendment moved by Senator Moore. All those in favour of the amendment please indicate their approval by saying “yea.”

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** And those opposed by saying “nay.”

**Some Hon. Senators:** Nay.



**The Hon. the Speaker:** I believe the “yeas” have it, and the amendment is approved.

• (1520)

**Hon. Eymard G. Corbin:** Your Honour, I wish to be recorded as abstaining from the vote.

**Senator Prud'homme:** Your Honour, I know it is not in the rules, but I wish my name be added to that of Senator Corbin's. I am in disagreement but did not ask for a vote.

You have a choice. If you say no to me, then I think I will get up and we will ask for a recorded vote. I wish to say “nay.”

**The Hon. the Speaker:** I think I know what senators want. I put the question to honourable senators and I have had an answer. However, there is no unanimity in the approval, so it would be “on division.” Certain senators wish to be recorded as abstaining from the vote, in particular Senators Corbin and Prud'homme.

**Senator Prud'homme:** I am not abstaining; I am objecting.

**Hon. Lise Bacon:** I abstain.

**Hon. Shirley Maheu:** I wish to be recorded as abstaining as well.

**The Hon. the Speaker:** Honourable senators, I have it that the vote passes on division. Several senators have risen to ask that their names be recorded as senators who abstain in the voice vote, namely, Senators Corbin, Bacon, Maheu, Ferretti Barth and Prud'homme.

**Senator Prud'homme:** Again, nay —

**The Hon. the Speaker:** It is on division. Unless we have a standing vote, I cannot record against.

Do you wish a standing vote, honourable senators?

**Some Hon. Senators:** No.

**Senator Prud'homme:** To help with the procedure, Your Honour, I think what we have said will be reported. People who read the record will know that I do not want to abstain. I want to say “against,” but do not ask for a vote as long as it is written in the minutes that I said “against.”

**The Hon. the Speaker:** I understand, Senator Prud'homme, but if the motion passes on division. Without asking and going through the process of a standing vote, I cannot indicate negative votes. I can, however, in that I have done it, give certain senators whom I have named an opportunity to indicate they are abstaining. I delete your name from that list.

**Senator Cools:** Add me to the abstentions, Your Honour.

**The Hon. the Speaker:** Senator Cools' name will be added.

Honourable senators, I will now proceed to the question on the second amendment, which was moved by the Honourable Senator Joyal.

**Senator Corbin:** Honourable senators, my understanding is that the bells were to ring at 3:15 p.m.

**The Hon. the Speaker:** You are quite right, Senator Corbin, but only if a standing vote is requested. I put the question and found that the “yeas” had it. There were some abstentions, which the record will show. I could not accommodate Senator Prud'homme on a negative vote, so we are now proceeding to the next amendment.

Honourable senators, we will now proceed with the vote on the second amendment, which was moved by the Honourable Senator Joyal. I will repeat the amendment.

And on the motion in amendment of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Moore, that the Bill be not now read a third time but that it be amended in the preamble, on page 1, by replacing lines 5 to 7 with the following:

“Province of Quebec finds its principal expression in the *Civil Code of Quebec*,”

Is it your pleasure, honourable senators, to adopt the motion in amendment?

**Some Hon. Senators:** No.

**The Hon. the Speaker:** I want to be sure in the process I follow. Therefore, I will follow the card that deals with this type of situation where there will be a request for a standing vote.

Will all those honourable senators in favour of the motion in amendment please say “yea”?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will all those honourable senators opposed to the motion in amendment please say “nay”?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** I believe the “nays” have it.

*And two honourable senators having risen:*

**The Hon. the Speaker:** There are two senators standing. Under our rules, that means we will have a division. We will have a 15-minute bell, which is what was in the order, unless there is an objection.

Call in the senators. The bells will ring for 15 minutes, which means that we will vote at 3:40 p.m.

• (15:40)

Motion in amendment of Senator Joyal negated on the following division:

#### YEAS

##### THE HONOURABLE SENATORS

Cools	Moore
Grafstein	Sparrow
Joyal	Watt—6

#### NAYS

##### THE HONOURABLE SENATORS

Andreychuk	Keon
Angus	Kinsella
Austin	Kroft
Bacon	LeBreton
Beaudoin	Losier-Cool
Bolduc	Lynch-Staunton
Carstairs	Maheu
Chalifoux	Mahovlich
Christensen	Mercier
Cochrane	Milne
Comeau	Morin
Cook	Murray
De Bané	Nolin
DeWare	Oliver
Doody	Pearson
Fairbairn	Poulin
Finestone	Poy
Fitzpatrick	Prud'homme
Forrestall	Rivest
Fraser	Robichaud
Furey	Roche
Gauthier	Rompkey
Gill	Rossiter
Graham	Sibbeston
Hervieux-Payette	Simard
Hubley	Tkachuk—52

#### ABSTENTIONS

##### THE HONOURABLE SENATORS

Corbin  
Ferretti Barth  
Gustafson—3

**The Hon. the Speaker:** Honourable senators, the question is on the motion in amendment of the Honourable Senator Grafstein. Is it your pleasure to adopt the motion in amendment?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Will those in favour of the amendment please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those opposed to the amendment please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the "nays" have it.

*And two honourable senators having risen:*

Motion in amendment of Senator Grafstein negated on the following division:

#### YEAS

##### THE HONOURABLE SENATORS

Andreychuk	Joyal
Cools	Moore
Grafstein	Sparrow
Gustafson	Watt—8

#### NAYS

##### THE HONOURABLE SENATORS

Angus	Keon
Austin	Kinsella
Bacon	Kroft
Beaudoin	LeBreton
Bolduc	Losier-Cool
Carstairs	Lynch-Staunton
Chalifoux	Maheu
Christensen	Mahovlich
Cochrane	Mercier
Comeau	Milne
Cook	Morin
De Bané	Murray
DeWare	Nolin
Doody	Oliver
Fairbairn	Pearson
Finestone	Poulin
Fitzpatrick	Poy
Forrestall	Prud'homme
Fraser	Rivest
Furey	Robichaud
Gauthier	Roche
Gill	Rompkey
Graham	Rossiter
Hervieux-Payette	Sibbeston
Hubley	Simard—50

#### ABSTENTIONS

##### THE HONOURABLE SENATORS

Corbin  
Ferretti Barth  
Tkachuk—3

• (1550)

Honourable senators, we will now move to the main motion, as amended. It was moved by the Honourable Senator De Bané, P.C., seconded by the Honourable Senator Poulin, that this bill be read the third time — and I will add the words “as amended.”

Will those honourable senators in favour of the motion please say “yea”?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those honourable senators opposed to the motion will please say “nay”?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** I believe the “yeas” have it.

*And two honourable senators having risen:*

**The Hon. the Speaker:** I call on the Table to carry out a division.

## YEAS

## THE HONOURABLE SENATORS

Andreychuk	Keon
Angus	Kinsella
Austin	Kroft
Bacon	LeBreton
Beaudoin	Losier-Cool
Bolduc	Lynch-Staunton
Carstairs	Maheu
Chalifoux	Mahovlich
Christensen	Mercier
Cochrane	Milne
Comeau	Morin
Cook	Murray
Corbin	Nolin
De Bané	Oliver
DeWare	Pearson
Doody	Poulin
Fairbairn	Poy
Ferretti Barth	Prud'homme
Finestone	Rivest
Fitzpatrick	Roach
Forrestall	Robichaud
Fraser	Rompkey
Furey	Rossiter
Gauthier	Sibbeston
Gill	Simard
Graham	Tkachuk
Hervieux-Payette	Watt—55.
Hubley	

## NAYS

## THE HONOURABLE SENATORS

Nil

## ABSTENTIONS

## THE HONOURABLE SENATORS

Cools	Joyal
Grafstein	Moore
Gustafson	Sparrow—6.

**The Hon. the Speaker:** I declare the motion passed.

Motion agreed to and bill read third time and passed, as amended.

SALES TAX AND EXCISE TAX  
AMENDMENTS BILL, 2001

## SECOND READING—DEBATE ADJOURNED

**Hon. Bill Rompkey** moved the second reading of Bill C-13, to amend the Excise Tax Act.

He said: Honourable senators, I am glad everyone is sitting down because this may be one of the most exciting speeches I have ever given.

I thank honourable senators for the opportunity to make some remarks on Bill C-13, the Sales Tax and Excise Tax Amendments Bill, 2001. From the start of its mandate, the government has been active in ensuring that we provide a tax system that is simpler and fairer not only for individual Canadians but for Canadian business as well. Bill C-13 contains measures that build on those objectives.

Before outlining the specific measures in Bill C-13, I should like to point out that this legislation is the result of successful cooperation between the government and the tax and business communities toward achieving our common aim of making our tax system simpler and fairer.

Many of the initiatives in this bill are the product of a fruitful consultation process involving both the government and industry. The main intent of Bill C-13 is to implement measures relating to the goods and services tax and the harmonized sales tax that were proposed in Budget 2000, as well as additional sales tax measures proposed in a Notice of Ways and Means motion tabled in Parliament on October 4, 2000.

These measures are aimed at improving the operation of the GST/HST in the affected areas and ensuring that the legislation accords with the policy intent. The bill also implements two amendments to the excise tax provisions of the Excise Tax Act. I will discuss these amendments in a few moments.



First, honourable senators, I want to outline the GST/HST measures in this bill that were proposed in Budget 2000. The GST/HST is designed to ensure the competitiveness of Canadian businesses and products in export markets. A number of measures proposed in Budget 2000 and contained in Bill C-13 are aimed at achieving that objective. Specifically, these measures relate to the GST/HST treatment of export distribution activities; the provision of warranty services by Canadian businesses to non-resident companies; the provision of storage and distribution services by Canadian service providers in relation to goods imported on behalf of non-residents; and sales of railway rolling stock to non-residents. Let me take a few moments to briefly summarize each of these measures.

Registrants engaged in export distribution activities involving the limited processing of goods for export face a cash flow cost that may be significant in relation to the level of value added to the goods. This can be the case where goods are imported for minor processing and subsequent export. The cash flow issue arises because tax is paid on the importation of the goods, but no offsetting tax is collected on their export. As a result, businesses must finance the tax until they receive a refund from the Canada Customs and Revenue Agency. The proposal in this bill for an export distribution centre program addresses the cash flow issue faced by low, value-added export-oriented businesses by allowing them to use an export distribution centre certificate to purchase or import inventory, or to import customers' goods on a tax-free basis. This measure will help ensure that the GST/HST does not present an impediment to the establishment of North American distribution centres in Canada.

• (1600)

In my introduction, I mentioned the cooperation between government and the tax and business communities. I should note that a national consultative process involving many interested parties took place on the Export Distribution Centre Program.

With respect to Canadian businesses providing a warranty repair or replacement service, Bill C-13 contains a measure that will help protect the competitive position of these Canadian businesses relative to their foreign, particularly U.S., counterparts. Currently, relief from tax on importation is granted for goods imported into Canada for warranty repair provided the goods are exported after the service is performed. However, where the imported goods are replaced rather than repaired, relief from tax on importation currently does not apply.

This bill proposes to extend the relieving rules to cover situations where a replacement good is provided under warranty and is exported in place of the original imported defective good, for example, where the original good is destroyed. This proposal would ensure that the GST/HST does not make Canadian suppliers of warranty repair or replacement service less competitive relative to foreign suppliers when these services are provided to non-residents.

Honourable senators, this bill addresses storage and distribution services on imported goods. Bill C-13 also expands on a program known as the Exporters of Processing Services Program. This program allows the tax-free importation of goods

by a Canadian processor for the purpose of processing the goods in Canada and subsequent export. It ensures that the GST/HST does not impose prohibitive cash flow costs on Canadian service providers by their having to pay tax on their customers' goods at the time of importation.

However, the Exporters of Processing Services Program does not apply where a Canadian processor only provides storage or distribution services. This bill proposes to expand the program to allow access to businesses that provide only storage or distribution services for non-residents.

Another proposal related to cross-border transactions contained in this bill concerns sales of goods delivered in Canada to non-residents who intend to export the goods. Special rules under the GST/HST system allow an unregistered non-resident person to acquire goods and most services in respect of goods, in Canada, without paying GST/HST where the goods are bound for export and remain in the possession of registered Canadian service providers before being exported. Bill C-13 contains amendments to ensure that this objective is met specifically.

An amendment is proposed relating to the sale of railway rolling stock to non-resident businesses. The current rules do not permit the sale of rolling stock to be tax-free if there is to be any use in Canada of the rolling stock prior to its export. This restriction does not reflect current industry practices. Rolling stock is rarely shipped empty to the U.S. destination. This bill proposes an amendment to ensure that the use of railway rolling stock to ship goods out of the country in the course of the exportation of the rolling stock itself will not disqualify it from tax-free treatment.

Honourable senators, once again, I should like to mention that the consultative process was used here to good effect.

I would now turn to an important sales tax initiative that was proposed in the budget for 2000 for the rental housing sector, which is likewise contained in this bill. Bill C-13 contains a measure of significant benefit to builders and purchasers of new residential rental accommodation. Under the existing sales tax system, tax applies to new residential rental property when the property is acquired by a landlord from the builder or on a self-assessed basis when the builder is the landlord. For purchaser-landlords, the tax becomes payable upon purchase of the residential complex. For builder-landlords the tax becomes payable as soon as the first unit in the residential complex is rented. As a result, both purchaser-landlords and builder-landlords finance the tax liability up front and recover the tax over time.

This bill implements the new residential rental property rebate which is a partial rebate of GST paid in respect of newly constructed, substantially renovated or converted, long-term residential rental accommodation. The rebate is payable to the builder-landlord or purchaser-landlord who paid the tax. Effectively, the new rebate will reduce the effective tax rate on newly constructed rental property by 2.5 percentage points, which is the same federal tax rate reduction that applies to purchases of new owner occupied homes under the existing new housing rebate program.

I will point out other sales tax measures. I mentioned earlier that in addition to the measures proposed in the 2000 budget, Bill C-13 contains other sales tax measures designed to improve the operation of the GST/HST. Three of these measures are also in the area of real property.

First, this bill proposes a refinement to the existing new housing rebate program that reduces the cost to consumers of building or purchasing a new home. Refinements are proposed to allow new homes to qualify where they are used primarily as a place of residence, as well as to provide short term accommodation to the public in certain circumstances, as is the case with many bed and breakfast establishments.

Second, Bill C-13 would address a problem that arises when a consumer who has purchased real property from the vendor and has paid GST or HST subsequently returns the property to the original vendor without having used it. Currently, there is no mechanism by which the consumer can recover the tax paid on the initial purchase. The proposed amendment in Bill C-13 would allow a consumer in this circumstance to recover the tax paid on the purchase of the property if it is returned to the original vendor within one year and pursuant to the original contract. This would place a consumer returning real property in a similar position to a person who returns new goods to a vendor and receives a credit or refund for the GST or HST.

The third real property measure contained in this bill relates to the sale of land by individuals. Senators may know that sales of real property by individuals or personal trusts are generally exempt from GST/HST provided the individual or trust has not used the property in a taxable business. This bill proposes to ensure that a sale of real property cannot be treated as exempt from sales tax if the seller was previously leasing it to other persons on a taxable basis.

Honourable senators, this bill has provisions regarding health and education. As honourable senators will recall, last year's budget contained proposals that reflect the government's commitment to continue to work towards improving the quality of life for Canadians. Bill C-13 builds on the spirit of that commitment — a commitment to provide access to quality health care and education.

In the area of health care, this bill proposes an amendment to continue in force an existing GST/HST exemption for speech therapy services that are billed by individual practitioners and that are not covered by the applicable provincial health care plan.

With respect to education, Bill C-13 contains a measure that will extend the sales tax exemption for vocational training to more situations including cases where the training is supplied by a government department or agency rather than a vocational school. Specifically, the amendment will do away with existing conditions on the exemption that require that the training or resulting certifications be subject to certain government regulations or that the school be run on a non-profit basis. The proposed change will ensure that vocational training provided in different provinces receives the same GST/HST treatment

regardless of the regulatory regime that exists in each province with respect to vocational schools. A further amendment would add the flexibility for providers of vocational training to elect to treat their services as taxable where their clients are commercial businesses that would prefer to pay the tax and recover it by way of input tax credits.

Honourable senators, in recognition of the important role played by charities in helping Canadians and enriching our communities, Bill C-13 proposes amendments to ensure that GST/HST legislation properly reflects the government's intended policy of generally exempting from sales tax the registry of real property related good by charities.

• (1610)

The bill also touches on excise tax on automobile air conditioners and heavy automobiles, as I stated at the outset. Bill C-13 also contains amendments relating to the non-GST/HST parts of the Excise Tax Act that deal with excise taxes on specific products.

The first amendment clarifies provisions relating to the deferral of excise taxes on automobile air conditioners installed in new automobiles and on heavy automobiles at the time of importation by, or sale to, a licensed manufacturer.

As honourable senators may be aware, the excise taxes on automobile air conditioners and heavy automobiles have been imposed since the mid-1970s. Since 1984, these taxes have been payable by the manufacturer at the time of delivery to an automobile dealer. Payment of the tax is effectively deferred at the time of importation and on intermediate transactions between licensees until the sale to an automobile dealer in Canada.

Several manufacturers have recently challenged the longstanding interpretation and application of these provisions with respect to automobile air conditioners installed in imported new motor vehicles, and they are seeking substantial refunds of tax. They argue that the relief provided on importations by licensed manufacturers does not simply defer payments of the tax, but permanently exempts these goods from tax. This is clearly contrary to the well-understood policy intent and longstanding interpretation and administration of these legislative provisions.

Bill C-13, therefore, proposes clarifying amendments to ensure that there can be no misinterpretation of these provisions with respect to importations as well as intermediate transactions.

The retroactive application of these amendments is consistent with the criteria that were laid out by the government in 1995 in the response to the seventh report of the Standing Senate Committee on Public Accounts. For nearly 20 years, these provisions had been interpreted and administered by both Revenue Canada and manufacturers and importers in a manner consistent with the underlying policy intent. The tax charged on automobile air conditioners has routinely been included in the price charged to consumers.



The amount of government revenue at risk is substantial. It is therefore appropriate that definitive action be taken, so that there can be no doubt as to the application of these provisions for both future and past transactions.

Next I will deal with the matter of waiver of interest or penalties. The second amendment relating to excise taxes provides discretion for the Minister of National Revenue to waive or cancel interest, or a penalty calculated in the same manner as interest, under the excise tax system. This amendment will achieve greater harmonization of the administrative rules under the excise tax system with those under the income tax and sales tax systems, which already provide for this waiver.

The amendment will further help to ensure fairer administration of the excise tax system.

Consistent with the manner in which this discretionary power has been exercised under the Income Tax Act and sales tax systems, the Minister of National Revenue would have the ability to waive interest in certain circumstances. An example of that could be a case whereby, despite a taxpayer's best efforts and as a result of extraordinary circumstances beyond the control of the taxpayer, the taxpayer has been prevented from meeting certain deadlines, and thus has incurred the interest.

This bill also addresses electronic filing. Bill C-13 reflects another improvement to the administration of the tax system. Honourable senators may recall that the Prime Minister recently announced the federal Government On-line initiative — the key element of the government's Connecting Canadians strategy — aimed at making Canada the most connected nation in the world. This initiative provides Canadians with another way to access the information and services that they receive in person and by telephone. You may know that businesses can now file GST/HST returns and remittance information electronically.

However, under the existing legislation, the person who wishes to do so is required to apply to the Minister of National Revenue for authorization. This procedure is cumbersome and onerous. Bill C-13 proposes amendments to streamline the administrative procedures and to harmonize them with those under the Income Tax Act, thereby facilitating the electronic filing of GST/HST returns.

In conclusion, honourable senators, the measures contained in Bill C-13 that I outlined here today propose to refine, streamline and clarify the application of our tax system. At the same time, they reflect the government's commitment to ensure that our tax system is fair. I therefore urge all honourable senators to give this bill their full support.

On motion of Senator Doody, debate adjourned.

## CANADA FOUNDATION FOR SUSTAINABLE DEVELOPMENT TECHNOLOGY BILL

SECOND READING—DEBATE ADJOURNED

**Hon. Nick G. Sibbeston** moved the second reading of Bill C-4, to establish a foundation to fund sustainable development technology.

[ Senator Rompkey ]

He said: Honourable senators, I am pleased to rise today to move second reading of Bill C-4. This is the first bill that I have had the privilege to introduce in the Senate.

**Hon. Senators:** Hear, hear!

**Senator Sibbeston:** Honourable senators, to lend some context to my remarks, I would point out that we live in an era in which we face many challenges and opportunities. Sustainable development is one such challenge, and it is one that Canada must face head on, if we are to continue to integrate economic and social progress.

One way to address sustainable development is with new ideas, new knowledge and new technologies. In essence, sustainable development hinges on our capacity to innovate.

Honourable senators, when we look back at the last decade to such things as the reduction of automotive emissions, the abatement of air pollution, improvements in energy efficiency and technologies to enhance oil recovery, which at the same time reduce the environmental footprint, the common factor has been new thinking, and new and affordable technologies. Innovation has helped us progress as a society, and it will continue to do so in the future. New technological innovations are indispensable to our success.

Bill C-4 would establish the Canada Foundation for Sustainable Development Technology. This foundation would administer the sustainable development technology fund of \$100 million that was announced in Budget 2000. This is but one way the Government of Canada is delivering on its key themes of innovation, quality of life and climate change and clean air.

The initial focus of the foundation will be on climate change and clean air, because these are two major environmental challenges of our time. The social and environmental benefits are universal and potentially large. For example, there are already signs of climate warming in the McKenzie Valley in Northern Canada, where I come from. The McKenzie Basin, which includes parts of the three territories as well as Northern British Columbia, Alberta and Saskatchewan, has experienced a warming trend of 1.5 degrees centigrade this century. The McKenzie Valley impact study of 1997 highlighted that regional effects of climate warming would involve landslides from permafrost thaw, reductions in water levels, increases in forest fires and reduction in forest yield. Changes in climate could have snowballing effects. Changes in vegetation and water levels could affect wildlife migration and reproduction. This could affect the sustainability of native lifestyles, so even though the people of the North have caused little of the problem, the impact on them could be significant. I have always been personally amazed that pollution from southern industrial areas shows up far in the North, in the lichen and eventually the animals that eat the lichen. That is why we need the foundation to fund technology projects that could help mitigate the release of pollutants and greenhouse gases that cause climate change.

• (1620)

The foundation will operate at arm's-length from the government in order to provide a new vehicle for engaging Canadians and fostering the long-term collaboration that is necessary to tackle the sustainable development challenge. The



foundation will operate close to the private sector and will enhance its engagement in these tough policy issues of climate change and clean air.

The foundation will provide funding for projects that help reduce greenhouse gas emissions, reduce the carbon intensity of energy systems, increase energy efficiency, capture, use and store carbon dioxide, lower volatile organic compounds, nitrogen oxides and fine particles released in the air, and so on.

Honourable senators, technologies are needed in all regions of the country, from north to south, from west to east. Some technologies can be put to use in all regions, while others are specific to local conditions and circumstances. For example, in the North, there is an opportunity to determine how to safely extract methane gas hydrates found in the permafrost and below the sea floor so that it can be used as a potential new source of clean energy.

In remote communities, technologies to produce wind-generated electricity, with traditional diesel generation, could help reduce greenhouse gas emissions and also reduce air pollutants that can cause health problems.

Ultimately, the extent to which the fund advances the cause of sustainable development depends on good targeting, good management and good administration. Bill C-4 provides for good governance practices through the foundation's organizational structure, its legal status and its operational practices.

Bill C-4 calls for the creation of a board of directors. The board would operate at arm's length from the government. The board would be an executive group. It would supervise the management of services of the foundation and, subject to the foundation's bylaws, it would exercise all its powers.

The second component of the governance structure is a group representing stakeholders and potential clients of the foundation. We call the people on this body "members of the foundation." They will review the activities of the board of directors.

The board would consist of 15 directors, all of whom would be from outside government. The first six members and the chairperson would be government appointees. The other eight would be appointed by members of the foundation.

Membership would be balanced in terms of expertise. The board would comprise directors who collectively represent the whole spectrum of sustainable technology development in Canada: public, private, academic and not-for-profit.

Last, but not least, the board will have balance in a geographic sense, with members drawn from all regions of Canada.

In the other place, there was debate on the checks and balances that the government would have over the foundation. Bill C-4 also prescribes measures to ensure prudent financial management and accountability, requiring the foundation to establish sound financial and management controls and to appoint an independent auditor to verify the effectiveness of these controls.

The legislation also requires the annual reports to include an evaluation of results achieved by the funding of projects year by year and accumulatively since the start of the foundation. This report will be publicly available and will be tabled in Parliament.

In addition, the detailed terms and conditions associated with the management of the fund are contained in a funding agreement between the Government of Canada and the foundation. The Auditor General of Canada will have scrutiny over the funding agreement.

Honourable senators, Bill C-4 does more than outline the machinery. It spells out who is eligible to receive funding. To accelerate technological innovation and foster partnerships, no single entity will be eligible. Instead, private-sector commercial corporations, universities, not-for-profit organizations, industrial associations and research institutes will have to band together to form partnerships and apply for funding together.

By supporting collaborative arrangements rather than single entities and by ensuring that funds are leveraged from the private sector, the proposed foundation will support measures to get new technologies into the economy quickly and efficiently so that all Canadians may benefit. Collaboration amongst the diverse actors will accelerate the development and demonstration of new sustainable development technologies.

In today's global economy, one has to be aware of activities and opportunities abroad. However, one must also strive to ensure that our own companies have the greatest chance of succeeding — of succeeding abroad and here at home. As such, Bill C-4 stipulates that the fund will support projects that are primarily carried on in Canada and that eligible recipients enter into collaborative arrangements that are established in Canada with Canadian organizations.

Activities of the proposed foundation will complement leverage and work compatibly with ongoing federal and provincial programs related to climate change and clean air, including those of the federal Program of Energy Research and Development, the Natural Sciences and Engineering Research Council, the Canada Foundation for Innovation, the Industrial Research Assistance Program, Technology Early Action Measures, and Technology Partnerships Canada.

In addition, the foundation's activities will allow Canadians to be one step closer to meeting international commitments on climate change and clean air.

To allow the government to start implementing the mandate of the fund as soon as possible, Bill C-4 also contains conditional clauses that provide for the Governor in Council to designate a private sector foundation to serve as a foundation in accordance with the requirements of the legislation. The legislation stipulates that in this eventuality the assets and liabilities of the private sector foundation would be transferred to the foundation and that its board of directors and corporation membership would dissolve, thus triggering the appointments of the board and the members of the foundation as stipulated in the legislation.

These conditional clauses are also contingency clauses, insurance against unnecessary slippage of schedule in the start-up phase. In the event of administrative or other delays of process, they would allow the government to fulfil its promise to establish the fund.

During the debate in the other place, members of Parliament were concerned about the fact that the bill did not contain a cap on the maximum allowable funding for each project. Let me assure honourable senators that the terms and conditions in the funding agreement specify that the foundation is to lever investments from other sources. The foundation will fund on average 33 per cent of eligible project costs. However, it will never fund more than 50 per cent of eligible costs of a particular project. This requirement is consistent with the promotion of teamwork and a good predictor of a project's success when proponents are willing to put up some of their money.

Before I close, honourable senators, let me briefly summarize the history of Bill C-4. The legislation is based upon more than two years of the most open, transparent and comprehensive consultation. The provinces were thoroughly involved in the process, as were the municipalities, the private sector, and academic institutions and non-governmental organizations. Every aspect of Canadian life was consulted in the two-year process. The sustainable development technology foundation is the product of that process.

• (1630)

Dialogue on the bill continued even after the bill was tabled in the other place on February 2. As a result, clarifying amendments were presented to the House of Commons Committee on Aboriginal Affairs, Northern Development and Natural Resources. After vigorous and constructive discussion, the legislation and the clarifying amendments received approval from the committee and from the other place.

In this new millennium, Canada must lead the world as a living model of sustainable development. To meet the challenges of climate change and clean air we must maintain the momentum. We must keep moving forward in knowledge and technology. We must develop new energy mixes. We must transfer every part of the energy chain from production to end use. The legislation now before you, honourable senators, will help us reach that goal.

[ Senator Sibbeston ]

On motion of Senator Kinsella, for Senator Cochrane, debate adjourned.

[Translation]

## PRIVACY RIGHTS CHARTER BILL

### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Finestone, P.C., seconded by the Honourable Senator Rompkey, P.C., for the second reading of Bill S-21, to guarantee the human right to privacy.—(Honourable Senator Robichaud, P.C.).

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the pleasure to speak to you today on Bill S-21, to guarantee the human right to privacy.

[English]

I should like to inform Senator Forrestall that my speech is very short, so he will most likely have time to make his very shortly.

[Translation]

The bill is the result of the work and determination of Senator Finestone. She should be congratulated on her efforts to promote this important matter. She has long been a champion of the right to privacy and has worked tirelessly to protect the privacy of Canadians. As the Chair of the Commons Standing Committee on Human Rights and the Status of Disabled Persons, she shepherded an in depth examination of the issues involved in privacy protection. The report published by the committee under the title: "Privacy: Where Do We Draw the Line," contains a careful assessment of many of the issues we are facing today. Needless to say, Senator Finestone is very well informed on the subject.

However, we would like that Bill S-21, to guarantee the human right to privacy, be now sent to the Senate Standing Committee on Social Affairs, Science and Technology for more thorough study, so that we may examine the impact it would have on the privacy of Canadians. The committee study would give senators an opportunity to examine certain issues that have been raised in connection with this bill.

The committee could try to clarify the definition of privacy. Definitions vary considerably. In many countries, it concerns the attempt to protect personal information. Elsewhere, it is the limit set on society's right to interfere in the personal affairs of its citizens. Reference is often made to physical, territorial or informational privacy. A study by the committee could explore more thoroughly whether privacy is a fundamental human right.



It has been brought to my attention that there is already a legislative infrastructure for matters of privacy. It includes sections 7 and 8 of the Canadian Charter of Rights and Freedoms, the Privacy Act, the Personal Information Protection and Electronic Documents Act, the Access to Information Act, and certain provisions of the Income Tax Act, as well as the Statistics Act and the Corrections and Conditional Release Act. These statutes have their own privacy codes.

The committee could enlighten us as to how Bill S-21 would tie in with the existing legislation. We would also like to be sure that the bill's provisions are consistent with the democratic concept of the burden of proof, i.e. the obligation to prove that what one is doing is indeed legal, instead of being able to do whatever one wants as long as it is not illegal, and also whether the mechanisms proposed in Bill S-21 are all consistent with the Criminal Code and recognize that it takes precedence in Canadian law. The committee could also elaborate on the role of the federal Privacy Commissioner in the context of this initiative.

Honourable senators, Bill S-21 is an important legislative initiative which has come about through the hard work of our honourable colleague Senator Finestone. Without wishing to get into debate, I believe that it would be entirely appropriate to seek the answers to certain questions and others that might be raised.

The Senate standing committee could seek information by inviting several experts in this field to appear before it and build on Senator Finestone's efforts to guarantee the human right to privacy.

#### SUBJECT MATTER REFERRED TO COMMITTEE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I move, seconded by the Honourable Senator Finestone:

That Bill S-21 be not now read the second time but that the subject-matter thereof be referred to the Standing Senate Committee on Social Affairs, Science and Technology; and

That the Order to resume debate on the motion for the second reading of the Bill remain on the Order Paper.

[English]

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion in amendment?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, before voting on the motion, I would place on the record our hope — indeed, our expectation — that the committee will do its work with all due dispatch. We look forward to having the advice of the Standing Senate Committee on Social Affairs, Science and Technology with no unnecessary delay.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

#### CANADA TRANSPORTATION ACT

BILL TO AMEND—SECOND READING—  
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Kirby, seconded by the Honourable Senator Mahovlich, for the second reading of Bill S-19, to amend the Canada Transportation Act.—(Honourable Senator ForreSTALL).

**Hon. J. Michael ForreSTALL:** Honourable senators, I rise today to take part in the second reading debate on Bill S-19, to amend the Canada Transportation Act, a measure brought forward by our colleague, Senator Kirby.

As the honourable senator pointed out, this is a short bill which would simply require both domestic and foreign air carriers to report the number of flight oversales, the number of items of lost baggage and the number of flight delays on a monthly basis to the Minister of Transport. The Minister of Transport would then compile this information and release it to the travelling public on a monthly basis. I gather this is designed to give Canadians a better picture of customer service in airlines operating in Canada.

• (1640)

We are told by Senator Kirby that this information is required in the United States, and I suppose that if it is good enough for our neighbours, it should be good enough for us.

Before getting into a discussion of the bill, I should like to reiterate the position we took on Bill C-26, the airline restructuring bill which we passed during the last Parliament. I believe that air transportation is an area in which this government's neglect of an issue has really hurt the Canadian people.

The Minister of Transport should have seen the air crisis coming long before it was presented to us in a take-it-or-leave-it takeover bid by Onex, the holding company of Mr. Schwartz. The legislation catch-up the government became engaged in did not serve Canadians well. However, that is all in the past. I said at the time that I thought it would take at least two years for things to settle down in the airline industry in Canada. Now it will take at least two years for Air Canada to make the necessary adjustments to its operation and to accommodate its takeover of Canadian Airlines.

We are at a point now where smaller airlines have already commenced operations. At least three in Canada have joined forces and are well advanced in sorting out routing, scheduling and other internal problems.



There is a consumer process in place. We have concerns about adding another level of reporting to the bureaucracy that has already been imposed on the airlines by Bill C-26. If we want to get back into a regime of airline regulation, perhaps that is the debate that we should enter into and get on with it.

I am a little concerned that the cost of the implementation of Senator Kirby's bill will be passed along to the consumer. We all know that this consumer is already being hit heavily by passenger facility charges at most of Canada's major airports. I can only describe as obscene the charge at Pearson for simply changing planes there, and that is something over which the travelling public has very little, if any, control.

Senator Kirby and others who opposed the original restructuring and rebuilding scheme for Pearson perhaps can now look a little more askance and ashamed than they were at the time.

What information will we get as a result of this bill? That large airlines lose baggage and small airlines do not? That charter airlines oversell and regularly scheduled airlines do not? I am not sure that the travelling public does not already know this and the cost of such reporting will undoubtedly be paid by the ticket purchaser. Does that make it all worthwhile? I am not sure.

We want to hear from the Minister of Transport as to why such requirements were not in Bill C-26 and how Senator Kirby's process fits in with the consumer complaints regime headed by Mr. Bruce Hood.

In any event, honourable senators, we look forward to this matter going to committee. There is some degree of urgency because of questions of seniority in merging the lists of pilots, airline attendants, mechanics, ground support staff and so on. We have seen very serious consequences already in the merging of the pilot seniority list. Where a pilot stands on the seniority list is his entire life. It is his career; it is his future; and it is all that he has to protect him. We will look forward to hearing from the President of Air Canada. I hope the minister can appear before us as well. Senators on this side would look forward to the bill's early referral to the Standing Senate Committee on Transport and Communications.

On motion of Senator Poulin, debate adjourned.

## STATE OF HEALTH CARE SYSTEM

REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY  
COMMITTEE—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Kirby, seconded by the Honourable Senator Poulin, for the adoption of the second report (interim) of the Standing Senate Committee on Social Affairs, Science and Technology entitled: "The Health of Canadians — The Federal Role, Volume One: The Story So Far," tabled in the

Senate on March 28, 2001.—(*Honourable Senator DeWare*).

**Hon. Mabel M. DeWare:** Honourable senators, since this is such an interesting topic for us all, I felt that I had to speak to the interim report of the Standing Senate Committee on Social Affairs, Science and Technology entitled "The Health of Canadians — The Federal Role." I should like to take this opportunity to congratulate the committee, and in particular the chair and deputy chair, Senator Kirby and Senator LeBreton respectively, for their excellent work.

I commend all members for the dedication, experience and enthusiasm they have brought to the task at hand. I have no doubt that they will successfully meet the many and significant challenges that such a major undertaking involves.

Already, thanks to their expertise and professionalism, they have generated a lot of positive coverage in the media and created positive expectations among Canadians. In fact, some people have gone so far as to wonder aloud why the government appointed former Saskatchewan Premier Roy Romanow to do something that sounds suspiciously similar. Although his mandate is rather unclear at this time, it seems likely that his commission will be duplicating, in at least some respects, the very impressive work of this committee.

In any event, the committee's study on the future of Canada's health care system is very timely given that health care in our country appears to be approaching something of a crossroads. Its importance in the national debate that is emerging on the future of Canadian health care cannot be underestimated. Our health care is central to Canada's national identity, and individual Canadians must be assured that adequate health services will continue to be available when they and their families need them.

With this study, the Standing Senate Committee on Social Affairs, Science and Technology is continuing the fine tradition established by previous Senate committees that have dealt with a wide range of issues, including various aspects of health care.

I remind this chamber of the June 1995 report of the Special Senate Committee on Euthanasia and Assisted Suicide entitled "Of Life and Death." The committee heard testimony for 14 months from witnesses across Canada and received hundreds of additional letters and briefs. While Canadians were divided on the issue of assisted suicide and not at all supportive of any potential move toward euthanasia, a strong consensus emerged that government should make palliative care a top priority in the restructuring of the health care system. The Prime Minister has made a very positive move in appointing a cabinet minister to look after this particular aspect of our health care system.

I also ask honourable senators to recall the June 2000 update to that report entitled "Quality End-of-Life Care: The Right of Every Canadian." It was produced by a subcommittee of the Standing Senate Committee on Social Affairs, Science and Technology that was ably chaired and co-chaired by Senators Carstairs and Beaudoin respectively.

Their commendable work confirmed that Canadians desire the same quality of health care at the end of life as they do at the beginning. This principle was central to the subcommittee's recommendation that a national strategy for end-of-life care be developed, implemented and monitored.

The update also reflected and expanded upon the recommendations made by the original committee. The need for good palliative care, including proper pain management, is becoming increasingly important. It has been a long and difficult struggle to establish palliative care as a viable alternative to other health care initiatives, especially in a time of shrinking health dollars. However, I am confident that the issues surrounding palliative care and pain management will receive due attention in the health care study currently being conducted by the Social Affairs Committee.

I look forward to seeing the committee make strong recommendations in this area as its work progresses and to seeing the government implement them.

It was also brought to my attention at the Canadian Medical Association breakfast hosted by our colleague Dr. Wilbert Keon on April 5 that the services provided by medical and surgical specialists and subspecialist physicians must not be overlooked. I was reminded that current debate has focused on the need to reform the primary care system, although the specialty care system has suffered from funding cuts as well. The CMA has produced a discussion paper that Dr. Keon referred to in his Senator's Statement. It identifies key issues and challenges in this area, and I am certain that the committee will draw on this as well as other sources in its study.

• (1650)

The Canadian Medical Association has also embarked on a study of the future of health, health care and medicine. I am sure that will be most helpful to the committee's study. A variety of groups representing other health care providers and patients will also be able to make a valuable contribution to the work of the committee.

In the meantime, the first of five volumes of the committee's report provides a thorough overview of the origins and background of Canada's health care system. I was pleased that the Standing Senate Committee on Social Affairs, Science and Technology began its study by looking at where we are now and how we got here, as well as public expectations regarding health care. With the abundance of suggestions already out there about options for the future, it would have been easy to put the cart before the horse. I am glad the committee did not succumb to that temptation.

As Senator Kirby noted in this chamber on March 29, 2001, it does indeed provide a solid foundation for the challenges that will confront the committee in the next four phases of this study. The committee has already started tracking some of those difficult challenges by exploring, in a general way, the growing

role of such things as drug therapy, home care and the trade-offs between different approaches to dealing with their rising costs.

It is clear that the members of the committee are keeping an open mind regarding all aspects of Canada's health care system against the backdrop of the 21st century, and keeping the needs of Canadians first and foremost. They are asking the right questions. I am confident that they will find the appropriate answers.

For now, their interim report forms a good starting point for the continuation of their work, one which can inspire confidence in Canadians, too, and give them hope that the future of their health care is in good hands.

I know that my colleagues join me in congratulating the Standing Senate Committee on Social Affairs, Science and Technology and wishing its members all the best in their ongoing contribution to the health care debate in Canada.

On motion of Senator Milne, debate adjourned.

[Translation]

## NATIONAL ANTHEM

### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Poy calling the attention of the Senate to the national anthem.—(*Honourable Senator Pépín*).

**Hon. Gérald-A. Beaudoin:** Honourable senators, I should like to say a few words on the subject of Senator Poy's inquiry relating to the national anthem.

At first glance, the English version of our national anthem discriminates against women. I believe it is possible — if so desired by federal parliamentarians — to amend the schedule to the National Anthem Act in order to modernize our national anthem.

I will limit myself to the legal aspect, which I feel is a preliminary step. Before deciding to take action, we need to know whether we have the power to do so as parliamentarians.

The Canadian Charter of Rights and Freedoms, the very heart of our Constitution, contains a most significant provision which guarantees absolute equality of the sexes.

[English]

I quote here the English version of section 28, which reads as follows:

Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.



[Translation]

The effect of this section is that the notwithstanding clause, section 33, cannot in our opinion be applied to the principle of equality of the sexes. No legislator can, by invoking the notwithstanding clause in section 33, enact any measure that violates the equality of the sexes.

In our opinion, even section 1 of the Charter, which addresses reasonable limits, is set aside by the unequivocal wording of section 28, which begins with a notwithstanding clause.

[English]

Professors William Black and Lynn Smith have written on the meaning of section 28 of the Charter. In the third edition of our collective work: Beaudoin and Mendes, entitled: *Charte canadienne des droits et libertés*, Wilson & Lafleur, 1996, at pages 894 to 895, state:

The legislative history and the wording of the section also means that section 28 stands in the way of legislative override, pursuant to section 33, to permit sex discrimination. In addition, it probably modifies the power to uphold a discriminatory statute, program or activity under section 1, at least when proposed limitations deny, by intent or effect, the equal enjoyment of rights or freedoms guaranteed elsewhere in the Charter.

[Translation]

As Senator Poy mentioned during her speech, on February 20, the national anthem is one of our symbols. Several attempts have been made to change our national anthem, but so far they have not been successful.

[English]

They are private bills to which Senator Poy referred in her speech.

[Translation]

We should examine this issue. Section 28 of the charter provides an important basis. Amending our national anthem to reflect the equal status of men and women could be a nice way to give, in practical terms, effect to section 28 of the charter.

[English]

Canada is probably the parliamentary democracy that protects most adequately the equality between men and women. Section 28 of the Charter enshrines clearly such equality. Furthermore, that section starts with a notwithstanding clause to clearly indicate that it is a very special section. The section is considerably reinforced.

[Translation]

Over the past few years, there has been a tendency among a number of groups, including universities, the media and Parliaments, to feminize titles, duties and designations that used to exist only in the masculine form in French. I am thinking of words such as "premier ministre," "sénateurs," "professeurs," "auteurs," "écrivains," "présidents" and several others. This movement is gaining general acceptance and seems logical. We have entered the era of charters of rights and freedoms, particularly since the 1948 Universal Declaration of Human Rights.

[English]

We must, however, distinguish the present problem from the famous "persons" case. In the *Muir Edwards* case of 1930, our tribunal of last resort at that time, that is the judicial committee of the Privy Council, ruled that the word "person" in section 24 of the Constitution Act, 1867, includes women. The Parliament of Canada did not amend the Constitution of Canada. It was a judicial ruling. It was a question of constitutional interpretation.

We know that our Constitution is composed of three elements: the constitutional texts, the interpretation and rulings of the courts, and, finally, the conventions of the Constitution. The famous ruling of the Privy Council in 1930 is part of our Constitution. In the present case, the words "of thine" would be substituted by the words "thy sons." It would be an amendment to an existing statute by another statute of Parliament.

Honourable senators, I wish to say a few words about the notion of copyright. The rule in matters of copyright is as follows: In Canada, the copyright no longer exists 50 years after the death of the author. Furthermore, if the wording of the national anthem is in the public domain, as it is declared, the Parliament of Canada may change it. The Parliament, therefore, has such a power. As the National Anthem Act itself uses the word "public domain," we have such a power.

My first reaction at this moment is that Parliament may intervene in the field of the national anthem. If ever a bill is presented, the Senate may be the logical legislative house to introduce it. Then the legal question will be studied in detail.

A second point is, should we adopt the bill? If it is the intention to restrict ourselves to the amendment of the words "thy sons," I am of the opinion, in view of section 28 of the Charter, that we may proceed. However, we should avoid rewriting poems, literary works, et cetera. There are some limits. We must be prudent.

Here we are concerned only with one objective, which is the discrimination between men and women. We would be justified to make such an amendment having regard to section 28 of our Charter of Rights and Freedoms. I suggest, honourable senators, that we continue to debate the suggestion made by Senator Poy.

On motion of Senator Poy, for Senator Pépin, debate adjourned.



## CANADIAN BUSINESS AND GOVERNMENT BUREAUCRACY

INQUIRY—DEBATE ADJOURNED

**Hon. Donald H. Oliver** rose pursuant to notice of February 6, 2001:

That he will call the attention of the Senate to the relationship of Canadian business and the Ottawa bureaucracy and how it was affected by the recent circulation of a memorandum by Peter Dey, the former Chair of the Ontario Securities Commission and now Chairman of Morgan Stanley Canada. He will also draw Honourable Senators' attention to that relationship in relation to a recent publication by the Public Policy Forum dealing with the Two Solitudes.

He said: Honourable senators, I am pleased to rise to speak to this inquiry.

Canada has one of the finest public services in the democratic world. We have excellent managers and we excel in IT and business systems. They serve both our Parliament and our country well. Developing countries look to our systems as something to emulate. It is the senior public servants who assist us as parliamentarians in the development of public policy initiatives that help Canada keep its United Nations' rating as "the best country in the world in which to live."

We are blessed in Canada to have bureaucrats of the calibre of Mel Capp, Kevin Lynch, David Dodge, Ian Green, Peter Harder and others. It is my view that, in the development of new initiatives that help keep us competitive, it is important that our bureaucracy have a direct interface with what I will euphemistically call Bay Street, the business community.

Honourable senators, in the 10 years since being summoned to his place, I have become increasingly concerned about the gulf that exists between business and the institution of Parliament. Canada's leading CEOs and the apparent lack of rapport with Ottawa's leading bureaucrats has been a cause of concern. I have raised this topic frequently, both in the Senate and in addresses to business communities at various seminars.

Last fall, honourable senators, irreparable damage was done to the business-bureaucratic relationship by Peter Dey, the former chair of the Ontario Securities Commission. Newspaper accounts indicate that he had a private meeting with the new Deputy Minister of Finance, Kevin Lynch, who spoke in confidence with him about a number of matters. They also spoke to other bureaucrats. The bureaucrats provided information to Dey and his associates. Bay Street broke that confidence by circulating a memo to the heads of the various financial institutions in Canada, especially the major banks. This incident did not help bridge the gulf existing between business and the bureaucracy.

Honourable senators, I believe that the gulf must disappear if we are to develop and proceed with good financial public policy

in the interests of all Canadians. In my opinion, this breach of confidence did more to strain the relationship between the financial sector in Canada and the government than Paul Martin refusing to allow the banks to merge three years ago, and that act alone probably turned the financial services sector back three or four years.

Here is what happened: There was a meeting in Kevin Lynch's Ottawa office last September 25, attended by Peter Harder, the Chairman of Morgan Stanley Canada Limited. They discussed a wide range of issues in the financial services sector. They discussed bank mergers and the methodology that banks would be required to follow under the old Bill C-38, which died on the Order Paper.

Later, Morgan Stanley, over the signature of its chairman, Mr. Dey, circulated a memorandum detailing the contents of what was purported to be a private, off-the-record, get-acquainted meeting. The memorandum, the contents of which were widely circulated in our national newspapers, both *The Globe and Mail* and the *National Post*, indicated a willingness on behalf of the Department of Finance to be very cooperative should merger discussions and applications begin again. The note was sent to the chief financial officers of Canada's five major banks. An apology was issued to Mr. Lynch in which Mr. Dey stated, according to the newspapers, that the contents of the memorandum he circulated did not reflect the views of the Department of Finance.

I will not discuss the details of who said what about what and when, and who retracted what, but one lawyer involved in the business of acquisitions and mergers was quoted in *The Globe and Mail* as saying, "I don't think this reflects well on anyone, what it does is call into question the integrity of the process."

Honourable senators, that is sad. From news reports I have read, this affair breached the trust that must exist between the two if the senior bureaucracy is to consult senior business on the efficacy of planned new public policies.

For too long, Bay Street has demonstrated an inability to comprehend the viable significance of an open relationship with Ottawa, almost as though Ottawa is considered to be unworthy of notice. However, not a day goes by that I do not observe examples of how Ottawa helps shape the destiny of the bottom lines of many of Canada's corporations.

• (1710)

The divide between Bay Street and the bureaucracy must be bridged if Canada is to take its place as a leader in the global economy at the beginning of the 21st century. Both government and industry have vital roles to play in ensuring a prosperous future for all Canadians, but they should not be attempting to carry out their respective roles in isolation from one another or by ignoring each other's needs and desires.

Perhaps Paul Tellier, Chairman and CEO of CNR, and Canada's Outstanding Business Person of 1998, said it best:

...Canada would be an even better country if we had more executive exchanges between the public and private sectors. Business has a responsibility in the political process. This responsibility goes way beyond fundraising or financial contributions. Stay out of the policy-making process and business gets the platform it deserves.

He stated something very similar as chairman of this year's Public Policy Dinner held recently in Toronto.

Concern over the growing lack of understanding between government and business manifested itself in a recent study published by the Public Policy Forum dealing with the general state of the industry-federal government relations. Its paper entitled "Bridging Two Solitudes" should be required reading for anyone who seeks to influence the federal public policy process. Because of the importance of this study and its relevance to the issue I am discussing, I will spend several minutes on its main findings.

Early last year, the Public Policy Forum surveyed corporate executives responsible for government relations, including executives in the financial services sector and senior public servants, to obtain their views on the evolution and present state of their relationship and to determine which government-industry relations practices were most effective.

First and foremost, if there are key messages in the study results, the corporations and the federal government believe that they are carrying out their side of the relationship effectively but, not surprisingly, each has doubts about the other side's performance.

The government respondents view themselves as open and responsive to industry representations and feel that such representations have an impact on government decisions. They are less certain that industry understands the government's decision-making process or that industry offers policy proposals that respond to the needs of the public as well as industry's self-interest.

By contrast, corporate respondents believe they understand how government works and that their proposals are balanced, but they feel that government does not adequately consult them and that their representations do not have real impact on government decisions.

The survey revealed a significant amount of agreement among corporate and government respondents on which advocacy techniques work and which ones do not work. Both groups felt that building coalitions with like-minded corporations, face-to-face meetings with politicians and public servants, and networking activities with one or two groups are the most effective techniques.

When asked to identify what single initiatives industry and government could undertake to improve the relationship between them, both government and the private sector pointed to

better-organized representation as the number one improvement. They also identified the need for more communication between government and industry and a more collaborative approach to the relationship.

In their book entitled *Business and Government in Canada: Partners for the Future*, Professors Wayne Taylor, Allan Warrack, and Mark Baetz are more blunt than the Public Policy Forum in detailing the mistakes made by industry when dealing with government. They list seven mistakes or incorrect assumptions, and I will deal with only four of them.

First, they say business still believes that economic power emanates totally from boardrooms. Businesses refuse to recognize that in the past 25 years equal if not greater economic clout now comes out of the Prime Minister's Office, the Privy Council Office and the line departments. CEOs ignore to their peril the fact that they are only additional players in a pluralistic, political system in which government must appease or otherwise deal with numerous competing interests.

Second, business fails to deal with the government in a businesslike manner. The basic tasks for business managers are gathering and analyzing data, identifying and solving problems, formulating and implementing strategies, and making decisions based on well-researched facts. However, when business comes to government, it often pleads cases of self-interest rather than offering to help government through the sharing of information and providing analysis that could help provide solutions of benefit to all sides. One senior bureaucrat told me that business demands are often unsupported by evidence and that alternative solutions are not suggested.

Third, even when intentions are good, businesses may often approach the wrong people with the wrong information at the wrong time, failing to understand government's organizational dynamics.

Finally, in the opinion of the professors, business organizations come before governments lacking agreement among their various members on fundamental parts of their arguments. One particular business organization in an industry approaching government all by itself will usually not bring about positive changes in government public policy. Also, businesses are particularly inept at mobilizing public support for ideas, the punitive bank merger process of several years ago being a perfect example.

On a positive note, on specific matters, especially during the Mulroney years in relation to the free trade file, attempts at consultation and cooperation between the two solitudes were quite rewarding. In 1986, an advisory group of business leaders was appointed for each of the 15 major sectors of the economy. They were collectively called sectoral advisory groups on international trade. The chairs of these groups reported through the International Advisory Committee to the Minister of International Trade. Both groups were staffed by government officials and consulted by various academics and consultants.



Reports of the effectiveness of these groups indicate that they were very successful. Business was able to communicate its concerns to government, and government priorities were influenced by these concerns. Both government and industry were working towards a deadline in an area of vital concern to all international trade. This was a significant priority for both sides.

It is clear to me that business must find an effective method to match its needs with the needs and interests of government and communicate this in an honest and forthright manner. Conversely, government must provide greater access for business and be willing to listen to and digest business arguments. In my opinion, the centralizing of decision making in Ottawa has reduced the power of government departments and their usefulness as contact points for business. Readily accessible contact points are needed for business so that they can build a continuous dialogue with specific government departments and increase government's knowledge about industry problems.

If business is to compete globally and respond effectively to the challenges and opportunities presented in the electronic marketplace, it must develop a working partnership with government. Each must recognize the other's strengths, needs, constraints and perspectives on issues and methods of operations. One way to do that is through regular executive interchange, as mentioned by Paul Tellier. Another is for industry to hire people from government and vice versa.

It is both interesting and instructive to note that the private sector in the United States has long sought to hire senior government officials. Their senior officials' experience, expertise and knowledge of government are highly valued. In Canada, movement from the ranks of the public service to the private sector is less common. It does happen but it is less common. Where it does exist, it would appear to be highly successful. Companies like Power Corporation, TD Canada Trust, CAE and CN have benefited from the knowledge and expertise of people such as Derek Burney and Paul Tellier, to name a few, who have been recruited from senior bureaucratic positions. Such expertise creates opportunities to participate in the public policy process that may not be otherwise recognized as being available. Perhaps, more important, it allows industry to have a realistic assessment of what is achievable in the current political environment.

It is instructive for us as senators to note that the Public Policy Forum study reported that neither industry nor government respondents thought it effective to deal with parliamentary committees. Both sides felt that the influence of the Prime Minister's Office, cabinet ministers and their political staff, and deputy ministers was increasing.

• (1720)

There are some things, perhaps, that senators can do. One is to engage in informed dialogue with business and industry. A

dialogue attempting to improve relations with industry occurred when I chaired the Standing Senate Committee on Transport and Communications. I have long been of the view that it is incumbent upon legislators to understand the business community and the environment in which it operates. As chair of that committee, I would invite various companies from sectors of the economy within the committees' mandate to gatherings where they would have an opportunity to tell committee members about the business environment in which they operate, issues of concern to them and the state of the industry. These informal gatherings, which were open to all senators, were beneficial to all concerned. The dialogue provided members of the Senate with an opportunity to know the industry players, gain a better understanding of the challenges and opportunities faced by the industry —

**The Hon. the Speaker *pro tempore*:** Senator Oliver's time has expired. Does he ask for leave to continue?

**Senator Oliver:** I have four more minutes.

**The Hon. the Speaker *pro tempore*:** Is leave granted?

**Hon. Senators:** Agreed.

**Senator Oliver:** Face-to-face contact with members of Parliament and senators, and regular networking with politicians is an effective way for the business sector to have its policy concerns brought before the public. Parliamentary committees are important players in the public policy arena, but it is up to the private sector to avail itself of this very powerful tool to help resolve difficult public policy issues.

Another method would be for senators to avail themselves of the services of the Business and Labour Trust operated by the Parliamentary Centre for Foreign Affairs, a think-tank located here in Ottawa with which I am sure senators are familiar. The mission of the Business and Labour Trust, which is a private not-for-profit group, is to increase awareness of the needs, hopes and aspirations of each group as they pertain to a particular business sector through the convening of face-to-face meetings among legislators and representatives of particular business and labour groups. I have used their services in the past to great benefit, especially when I was dealing with the telecom area and changes being brought before the Transport and Communications Committee.

We should also become involved in the work of the Public Policy Forum, particularly the work it is doing to analyze the two solitudes of business and government and its attempt to find ways to close the gap between these two pillars. The preliminary work done by the Public Policy Forum on the subject is instructive, but it should be followed up by a more in-depth work stressing the means by which these two groups can work together for better harmony. Senators could be helpful in this further analysis.



Finally, as senators, we should give some thought to having the Senate, either through a special committee or an existing committee that understands the complexity of business and industry, conduct a study that would produce recommendations for change. Such a committee would hear from representatives from the federal bureaucracy and business, allowing each group to express publicly the frustrations they feel and to put on the public record suggestions for change. We could even go back to the structure put in place during the free trade negotiations to see why they worked so well, and whether they could be adapted to current and ongoing situations.

If Canada is to succeed in the global marketplace, government and industry cannot remain as two solitudes. There is a synergy created by them both working together. I have given examples and methods by which these synergies can be developed.

I look forward to the comments and suggestions of honourable senators on this subject, and I do hope that representatives of business and government are listening.

On motion of Senator DeWare, debate adjourned.

[Translation]

### ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Tuesday next, May 1, 2001, at 2:00 p.m.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until Tuesday, May 1, 2001, at 2 p.m.

# THE SENATE OF CANADA

## PROGRESS OF LEGISLATION

(1st Session, 37th Parliament)

Thursday, April 26, 2001

### GOVERNMENT BILLS (SENATE)

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-2	An Act respecting marine liability, and to validate certain by-laws and regulations	01/01/31	01/01/31	—	—	—	01/01/31		
S-3	An Act to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts	01/01/31	01/02/07	Transport and Communications					
S-4	A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	01/01/31	01/02/07	Legal and Constitutional Affairs	01/03/29	0 + 1 at 3rd	01/04/26		
S-5	An Act to amend the Blue Water Bridge Authority Act	01/01/31	01/02/07	Transport and Communications	01/03/01	0	01/03/12		
S-11	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts	01/02/06	01/02/21	Banking, Trade and Commerce	01/04/05	17			
S-16	An Act to amend the Proceeds of Crime (Money Laundering) Act	01/02/20	01/03/01	Banking, Trade and Commerce	01/03/22	0	01/04/04		
S-17	An Act to amend the Patent Act	01/02/20	01/03/12	Banking, Trade and Commerce	01/04/05	0			
S-23	An Act to amend the Customs Act and to make related amendments to other Acts	01/03/22							
S-24	An Act to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence	01/03/27	01/04/05	Aboriginal Peoples					

### GOVERNMENT BILLS (HOUSE OF COMMONS)

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-2	An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations	01/04/05	01/04/24	Social Affairs, Science and Technology					
C-4	An Act to establish a foundation to fund sustainable development technology	01/04/24							

C-8	An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions	01/04/03	01/04/25	Banking, Trade and Commerce					
C-12	An Act to amend the Judges Act and to amend another Act in consequence	01/04/24							
C-13	An Act to amend the Excise Tax Act	01/04/24							
C-20	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	1/01
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	2/01

## COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
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## SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	01/01/31	01/01/31	National Finance	01/03/28	5			
S-7	An Act to amend the Broadcasting Act (Sen. Finestone, P.C.)	01/01/31	01/02/07	Transport and Communications					
S-8	An Act to maintain the principles relating to the role of the Senate as established by the Constitution of Canada (Sen. Joyal, P.C.)	01/01/31							
S-9	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	01/01/31							
S-10	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	01/01/31	01/02/08	—	—	—	01/02/08		
S-12	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	01/02/07	01/03/27	Social Affairs, Science and Technology					
S-13	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	01/02/07							
S-14	An Act respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day (Sen. Lynch-Staunton)	01/02/07	01/02/20	Social Affairs, Science and Technology	01/04/26	0			



	... not to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	01/02/20/	01/03/01	Energy, the Environment and Natural Resources
S-18	An Act to Amend the Food and Drugs Act (clean drinking water) (Sen. Grafstein)	01/02/20	01/04/24	Social Affairs, Science and Technology
S-19	An Act to amend the Canada Transportation Act (Sen. Kirby)	01/02/21		
S-20	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	01/03/12		
S-21	An Act to guarantee the human right to privacy (Sen. Finestone, P.C.)	01/03/13		Subject-matter 01/04/26 Social Affairs, Science and Technology
S-22	An Act to provide for the recognition of the Canadian Horse as the national horse of Canada (Sen. Murray, P.C.)	01/03/21		

PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
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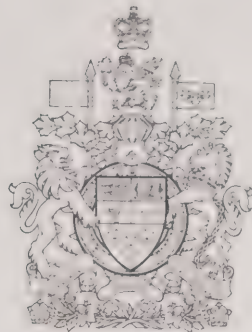
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CANADA

# Debates of the Senate

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37th PARLIAMENT

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NUMBER 30

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OFFICIAL REPORT  
(HANSARD)

**Tuesday, May 1, 2001**

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THE HONOURABLE DAN HAYS  
SPEAKER



This issue contains the latest listing of Senators, Officers of the Senate, the Ministry,  
and Senators serving on Standing, Special and Joint Committees

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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Tuesday, May 1, 2001

The Senate met at 2 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### INTERGOVERNMENTAL AFFAIRS

##### EQUALIZATION PAYMENTS

**Hon. Gerald J. Comeau:** Honourable senators, equalization programs were introduced in Canada to avoid creating two types of provinces — the rich provinces and the poor provinces. In fact, the Constitution of Canada intends that equalization programs should allow all provinces to deliver a comparable level of services with comparable tax rates.

The economy of Nova Scotia has improved at least in recent years, thanks in large part to offshore energy development pioneered by the Buchanan government. Unfortunately, a cap was placed on equalization in 1982, creating the situation whereby poorer provinces will never be able to catch up. The cap contributes to a widening of disparities between the have and have-not provinces, and leads to a two-tiered system of essential services across Canada. The rich provinces can lower taxation rates, offer better health services to their citizens and incentives to business, while the poorer provinces get increasingly behind and our bright young graduates move to prosperous provinces.

Honourable senators, our provincial government seeks allies here in Ottawa to help gain equity for our citizens. Unfortunately, the very people in the position to help their province, the Liberal members from Atlantic Canada, are again failing in their duties. Atlantic Canadian NDP members, to their credit, are helping us, but the Liberal members fight and undermine our efforts. The minister responsible for Nova Scotia toes the party line because he does not want to lose his cabinet post, while his understudy, Geoff Regan, must keep his nose clean to get a cabinet post, if ever Paul Martin is anointed leader of the Liberal Party.

Mr. Regan is particularly irritating because he is resurrecting old political battles from the 1970s to justify his lack of support for Atlantic Canadian equity. This is as bad as the 100 some odd members from Ontario with their stereotypical perceptions of Atlantic Canadians. In one of his recent media diatribes, Mr. Regan blamed the debt monkey on our collective backs for making us poor. Not to despair, though, he indicated that he could find a creative way to remove the monkey.

Honourable senators, I suggest it is not a monkey that is holding us back, but a guerrilla, who is ambushing our efforts to help our region. Because of cabinet solidarity, the Nova Scotia

minister may be excused for not fighting on behalf of Nova Scotians, but Mr. Regan and the other Liberal backbenchers do not have that excuse. A cabinet post is not worth the cost. Duty to your region comes first. Remember the election of 1997, and what can happen if one places cabinet post aspirations above duty to constituents.

#### THE HONOURABLE NORMAN K. ATKINS

##### WELCOMING COMMENTS UPON RETURN TO CHAMBER

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I wish to welcome back Senator Norman Atkins. It is wonderful to see him back in this chamber and looking in such good health. We hope he will continue in good health, which will even allow him to give us a hard time now and then.

**Senator Atkins:** Starting today.

#### NOVA SCOTIA

##### SACKVILLE—CAVALIER SCHOOL HERITAGE FAIR

**Hon. Jane Marie Cordy:** Honourable senators, on Friday, April 27, 2001, I had the great pleasure of visiting Cavalier Drive School in Sackville, Nova Scotia. The school was hosting its second heritage fair. Students from grades 4 to 9 presented heritage projects, either as individuals or as groups. A heritage fair is similar to a science fair but the focus is on Canadian history.

I was extremely impressed by the quality of work done by the students. The effort these young people put into their projects was evident, not only by the visual appeal but by the knowledge they displayed. I had a wonderful time viewing projects and talking to the students about their work. These students are well aware of their Canadian history.

The projects ranged from topics such as Lucy Maud Montgomery to the Acadians, to former Prime Ministers Pierre Trudeau and Sir John A. Macdonald, and to Canadians who served in the Vietnam War. It was a delight to see the enthusiasm demonstrated by the students, who were pleased to share their knowledge with their families and the visitors who came to their heritage fair.

The quality of the students' work was most impressive. In addition to the students' projects on display, local historical and cultural groups were invited to share and celebrate their work at the heritage fair. Heritage workshops were also held for the students at the school on such topics as town criers, the legislative library and Nova Scotia's sports heroes.

The tremendous success of this heritage fair is due in no small part to Stephen Davidson and Maritza Adelaar, teachers at the school, who were the coordinators for this event. Heritage fairs are sponsored and promoted by the same people who produce television's *Heritage Minutes*, which is a private agency dedicated to the promotion and celebration of Canada's heritage.

Matt Francis was the overall winner at the Cavalier Drive Heritage Fair. He will represent the Halifax Regional School Board at the National Heritage Fair, which will be held in Kamloops, British Columbia.

Honourable senators, I congratulate Mrs. Joan MacMullin and her staff at Cavalier Drive School, who provided the opportunity for their students to be involved in such an exciting event. The enthusiasm and hard work of the staff is reflected in the success of the heritage fair, both for the students and the community.

## IMMIGRATION AND REFUGEE BOARD

### APPOINTMENTS

**Hon. Marjory LeBreton:** Honourable senators, a few weeks ago I spoke in this chamber about ethics, honesty and integrity. We agonize over the growing public cynicism about politics and politicians. Is it any wonder that people should feel this way? May I remind honourable senators of those words in the famous original Liberal Red Book:

...the Conservatives made a practice of choosing political friends when making the thousands of appointments to boards, commissions, and agencies that the Cabinet is required by the law to carry out.

They went on to say that they would appoint more women, people of different ethnic backgrounds, and merit would be the only criteria. Therefore, what are we to think when we read a report in Saturday's *Montreal Gazette* on the massive infusion of Liberals who are now earning \$89,000 a year as members of the Immigration and Refugee Board?

• (1410)

For the record, I have never suggested that political affiliation should prevent an individual from being appointed to serve in government, but the question here is ethics.

Honourable senators, can you imagine the eight column headlines, the outrage of the Liberals or the stampede of public opinion if the spouse of any Progressive Conservative in this chamber or the other place were to receive such a lucrative appointment? The question is not one of spousal independence or competence, but rather one of ethics, hypocrisy, duplicity and, above all, accountability. We despair of the public view that politicians cannot be trusted.

Honourable senators, in another career, I can just see one of our colleagues opposite penning an editorial full of indignation and condemnation over this issue.

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** I should like to draw the attention of honourable senators to the presence in the gallery of members of the Japan-Canada Diet Friendship Group led by Mr. Hose Norota.

On behalf of all honourable senators, I bid you welcome to the Senate of Canada.

## HUMAN RESOURCES DEVELOPMENT

### STUDENT LOAN PROGRAM

**Hon. Norman K. Atkins:** Honourable senators, I wish to begin by saying it is great to be back in this chamber once again. I thank my colleagues for their kind wishes and especially Dr. Keon for his incredible skill.

This is my first statement in this new Parliament. I wish to return to an issue that I raised a number of times in the last Parliament, the problems in the Student Loan Program as it is presently conceived and run by the Government of Canada.

In March of this year, Statistics Canada produced a report entitled, "The Assets and Debts of Canadians: An Overview of the Results of the Survey of Financial Security." This survey contained two parts that are of great interest to some of us who are concerned about the state of post-secondary education in Canada. On a positive note, the survey reveals that, with regard to earning capacity, those Canadians with post-secondary degrees dominate the territory above the median wealth line. There is a definitive link between the accumulation of wealth and possessing bachelor's, master's or doctoral degrees. This seems to conclusively prove the argument that many of us have made that the key to success in our economy is higher education.

Another part of the survey is disturbing as it reveals that more of those who pursue post-secondary education are having to do so through the use of student loans and are graduating with crippling debt loads. Over 30 per cent of Canadians under the age of 25 are either still accumulating debt through student loans or struggling to pay them off. When we move to the next numerical group, those between 25 and 34, those still dealing with the repayment of student debt remains high, over 22 per cent.

Not only is there a disproportionate number of young Canadians having to accumulate and then repay this debt in order to achieve a post-secondary education, but the amounts owed are great. The Statistics Canada survey illustrates that the largest debt burden in Canada is borne by young people and especially those with children. Those who fall into this category owe \$5,000 for every \$100 of assets, largely because of student loans.



These statistics illustrate how difficult it is for young Canadians starting out to achieve some degree of financial stability as a result of the large accumulation of student loan debt. We must devise a better way to deal with the costs of obtaining a post-secondary degree. If we do not address this reality soon, we will soon be faced with a situation where only those with wealthy families will be able to attend colleges and universities. The promise of being competitive and succeeding in the global economy will be restricted to the wealthy in our society. The promise of access to post-secondary education in Canada for all those who qualify academically will be broken.

*Translation*

## ROUTINE PROCEEDINGS

### ADJOURNMENT

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate, and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, May 2, 2001, at 1:30 p.m.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

### L'ASSEMBLÉE PARLEMENTAIRE DE LA FRANCOPHONIE

CANADIAN DELEGATION TO MEETING FROM  
MARCH 15 TO 27, 2001—REPORT TABLED

**Hon. Rose-Marie Losier-Cool:** Honourable senators, pursuant to rule 23(6), I have the honour to table, in both official languages, the report of the Canadian delegation to l'Assemblée parlementaire de la Francophonie and the related financial report.

This report relates to the meeting of the cooperation and development commission, which was held in Val d'Aoste, Italy, from March 15 to 17, 2001.

CANADIAN DELEGATION TO MEETING FROM  
FEBRUARY 26 TO 28, 2001—REPORT TABLED

**Hon. Pierre De Bané:** Honourable senators, pursuant to rule 23(6), I have the honour to table, in both official languages, the report of the Canadian delegation to l'Assemblée parlementaire de la Francophonie and the related financial report.

This report relates to the meeting of the parliamentary affairs commission, which was held in Luxembourg from March 26 to 28, 2001.

## TRANSPORT AND COMMUNICATIONS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO HEAR  
MINISTER OF TRANSPORT ON BUSING REGULATION

**Hon. Lise Bacon:** Honourable senators, I give notice that at the next sitting of the Senate, I shall move:

That the Standing Senate Committee on Transport and Communications be authorized to hear the Minister of Transport in order to receive a briefing on busing regulation.

That the committee report no later than September 30, 2001.

*[English]*

## HUMAN RIGHTS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO PERMIT  
ELECTRONIC COVERAGE

**Hon. A. Raynell Andreychuk:** Honourable senators, I give notice that at the next sitting of the Senate, I shall move:

That the Standing Senate Committee on Human Rights be authorized to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings.

• (1420)

NOTICE OF MOTION TO AUTHORIZE COMMITTEE  
TO ENGAGE SERVICES

**Hon. A. Raynell Andreychuk:** Honourable senators, I give notice that at the next sitting of the Senate I shall move:

That the Standing Senate Committee on Human Rights have power to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of its examination and consideration of such bills, subject matters of bills and estimates as are referred to it.

## ACCESS TO CENSUS INFORMATION

PRESENTATION OF PETITION

**Hon. Lorna Milne:** Honourable senators, I promised last week that we would be hearing from Alberta this week. I am delighted to have the honour to present 2,115 signatures from Canadians in the province of Alberta — mainly from Calgary but some from Lethbridge, Barnwell and Edmonton — who are researching their ancestry. They petition as follows:

Your petitioners call upon Parliament to take whatever steps necessary to retroactively amend Confidentiality-Privacy clauses of Statistics Acts since 1906, to allow release to the Public after a reasonable period of time, of Post 1901 Census reports starting with the 1906 Census.



These signatures, honourable senators, are in addition to the 6,092 I have presented in this calendar year. I have now presented 8,207 signatures to this Parliament and petitions with over 6,000 signatures to the Thirty-sixth Parliament, all calling for immediate action on this very important matter of Canadian history.

## QUESTION PERIOD

### IMMIGRATION AND REFUGEE BOARD

#### APPOINTMENTS

**Hon. Marjory LeBreton:** Honourable senators, my question is directed to the Leader of the Government in the Senate and is with regard to the Immigration and Refugee Board. As reported in the *Montreal Gazette* on Saturday last, Professor François Crépeau of the Université du Québec is reported as saying:

These appointments —

— meaning those to the Immigration and Refugee Board —

— are problematic because board members owe their positions to politics — not to competence...

He went on to say:

People are being appointed who just aren't competent to do the job.

In the same article, Professor Fernand Gauthier from the Université de Montréal said:

It's become a branch of the Liberal Party now.

Would the Leader of the Government in the Senate, in her position as a member of cabinet, appeal to the Minister of Immigration to appoint people who are competent? I am not questioning the competency of every member of the board. I am simply reporting what these professors have said. People serving on the Immigration and Refugee Board deal with very sensitive and critical issues for people seeking entry to Canada.

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for her question. The reality is that appointments to the IRB are competency based. The individuals are in fact tested. They must pass the qualifications, and they do so. They are all honourable appointees.

**Senator LeBreton:** Honourable senators, I thank the Leader for that answer. There are two professors in the province of Quebec, from two highly respected educational institutions, who disagree. Since the Leader of the Government has said that they must pass specific tests and abide by certain criteria to be named to this very important board — at a very good salary, I might add — would she table the guidelines and the tests that candidates must undergo?

**Senator Carstairs:** Honourable senators, I do not question the competency of the two professors. Frankly, I am somewhat skeptical of their questioning the competency of individuals who have applied and have been accepted to represent this extremely important — as the senator herself has said — appeal board within our immigration and refugee system.

With regard to any other details on guidelines, I will undertake to see whether that information is available. If it is, I will make it available to the honourable senator.

**Senator LeBreton:** Honourable senators, further to this whole issue of appointments, as I said in my statement, I have never questioned the right of people to serve the government because of political affiliation. However, there is currently a feeling in the country, and certainly around Ottawa, that the government can do whatever it likes. Surely, the Leader of the Government in the Senate will acknowledge that public trust and accountability is sorely lacking in this area, as in others. There does not seem to be any recourse for people to have any say in any of these processes at all.

Can the Leader of the Government in the Senate defend this government, which has been so critical of other governments in the past? The government is so hypocritical because it is obvious that the feeling of the Liberal government is that it can do whatever it wants while everyone else must live by another set of standards.

**Senator Carstairs:** Honourable senators, it is very interesting that the senator takes that position. She clearly got her information from an article in the *Montreal Gazette*. I will quote from that article as follows:

Not all local IRB members have Liberal pasts. A few, including former Tory MP Charles DeBlois, have ties to the Conservatives.

**Senator LeBreton:** Are we not lucky, honourable senators, to have one out of 32. The issue is not the appointments per se. The issue is accountability and ethics. As parliamentarians, we must look at what is going on here and ask ourselves whether it is any wonder that people want nothing to do with politics or politicians.

**Senator Carstairs:** Honourable senators, obviously many of us have a lot to do with politicians and the political process and we believe in that process. The senator says, "Oh, wonderful, one out of 32." Perhaps she should look at the results in the last Quebec election.

### PRIME MINISTER'S OFFICE

#### CRITERIA FOR APPOINTMENTS

**Hon. Terry Stratton:** Honourable senators, as the minister is aware, I tabled Bill S-20 in the Senate not too long ago. That bill proposes that a Senate Committee of the Whole vet some of these appointments.

In order to show that government is becoming more open and transparent, would it not be advisable to make public the criteria for these positions so that those who are interested and believe that they have the required credentials can apply? People want a public process. Could that not happen?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the bill that the senator has tabled is under debate. I found the intervention of Senator Banks very interesting. In reply to the second reading speech of Senator Stratton, Senator Banks, a very newly appointed member of this chamber, said that he would not want to see in this place the kind of investigatory hearings that take place in the United States, with their very personal attacks upon appointees.

My understanding is that a process is already in place. MPs can examine any appointment they choose. Unfortunately, they rarely take advantage of their authority to do so.

**Senator Stratton:** Honourable senators, my concern and that of the public is that the process is not transparent, which is the fundamental issue. Would it not benefit all to have that process more transparent? We could advertise positions. We could try something innovative whereby individuals of any political stripe who have the required credentials could apply.

• (1430)

**Senator Carstairs:** I am not sure that the honourable senator completely understands the process that exists now. Many of these appointments are listed in the *Canada Gazette*. They are a call for public applications.

**Senator Stratton:** If that is the case, I would appreciate the Leader of the Government sending me those that are advertised, those that are made public.

**Senator Carstairs:** If the honourable senator will give me several days to do it, I would be pleased to do so.

[Translation]

## STATISTICS CANADA

### CENSUS QUESTIONNAIRE—OMISSION OF ACADIANS AS CULTURAL GROUP

**Hon. Gerald J. Comeau:** Honourable senators, in the latest census, in the question on ethnic origin, a number of cultural groups were proposed, but it seems that the Acadians were left out. We must not forget that the Acadians were the first settlers in Canada, after the Aboriginal peoples, of course. What can be done to prevent a repetition of this omission in the next census?

[English]

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for his question. My understanding of the census data — he has the form and I have not yet seen it — is that it was a self-identification process. I do not know why the Acadian

people, including myself, have been left out, but I will certainly raise that question with the appropriate minister.

[Translation]

**Senator Comeau:** Honourable senators, the Acadians do not see themselves as French Canadians. They see themselves as Canadians, but French-speaking Canadians. Can the minister ensure that this distinction is made clear to the officials?

[English]

**Senator Carstairs:** I thank the honourable senator for his question. He is quite correct that there is a distinction between those who identify as Acadians and someone who speaks French. Unfortunately, I can identify myself as Acadian but certainly could not identify myself as someone who speaks French and, therefore, not as a French Canadian. I can assure the honourable senator that I will make the distinction very clear.

[Translation]

### CENSUS QUESTIONNAIRE—CANADIAN LINGUISTIC DUALITY

**Hon. Jean-Claude Rivest:** Honourable senators, my question is for the Leader of the Government in the Senate. Senator Comeau's question is very important. The census questionnaire does not make it possible to follow the demographic evolution of the various cultural groups, including the francophone communities, including the Acadians. More specifically, it does not allow for an evaluation of the proportion of anglophones and francophones in Canada.

This question was raised on many occasions at the Standing Joint Committee on Official Languages. Unfortunately, the scientists at Statistics Canada did not take this into account. It is very important in terms of the defence and promotion of Canada's linguistic duality, beyond the other ethnic groups, which, of course, are part of the Canadian reality. It is vital to know how many Canadians see themselves as French Canadians and how many see themselves as English Canadians. This has even greater significance in connection with the evolution of the Acadian community.

[English]

**Hon. Sharon Carstairs (Leader of the Government):** I would ask Senator Rivest to give me some specific examples of where he thinks questions could be changed to result in the kind of identification for which he is asking. If he will do that, I assure him that I will take it forward to the appropriate minister.

## MULTICULTURALISM

### UNITED STATES SOUTHERN CALIFORNIA PREPARATORY CONFERENCE FOR WORLD CONFERENCE AGAINST RACISM LIST OF PARTICIPANTS

**Hon. Donald H. Oliver:** Honourable senators, my question is for the Leader of the Government in the Senate. It relates to a news release from Canadian Heritage. It reads:



Led by the Honourable Hedy Fry, Secretary of State (Multiculturalism) (Status of Women), a delegation of distinguished Canadians representing the film industry, broadcast media, regulators, academics and community groups will be working with their U.S. counterparts as part of the United States Southern California Preparatory Conference for the World Conference Against Racism.

Would the Leader of the Government be kind enough to provide us with the names of the individuals who are assisting the Honourable Hedy Fry and the organizations they represent, the number of visible minorities in the delegation, and the provinces or territories from which they come?

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his question. I will try to obtain that information for him as soon as possible.

[Translation]

### DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have four delayed answers. The first is in response to the question of Senator Oliver, raised on March 27, 2001, regarding Air Canada; the second is in response to a question raised by Senator Gauthier, on March 29, 2001, regarding the maintenance of established linguistic rights; the third is in response to a question raised by Senator Forrestall, on April 5, 2001, regarding the replacement of Sea King helicopters; and the fourth is in response to a question raised by Senator Spivak, on April 5, 2001, regarding the regulatory process for genetically modified wheat.

### TRANSPORT

#### AIR CANADA—DISCUSSIONS WITH CANADIAN AIRLINES PILOTS ON SENIORITY—EFFECT ON SAFETY

*(Response to question raised by Hon. Donald H. Oliver on March 27, 2001)*

Transport Canada is providing the necessary regulatory safety oversight to ensure that all requirements for a safe transition are met by the new merged air carrier.

The criteria used for the merging of the Air Canada and Canadian Airlines pilots' seniority lists has been the subject of arbitration which began in September 2000, with the hearing portion completed in early February 2001.

The ruling was announced March 31, 2001, and is binding without appeal from either pilot association.

Air Canada is placing a high priority on mitigating any emotional stress which may result from the ruling. Air Canada Managers, Human Relations, as well as stress counselors and representatives from both pilot associations, were present in the flight operations areas on March 30 —

April 2, 2001. Plans are to reduce the extra management presence as circumstances deem appropriate.

As well, pairing of pilots from the two groups will not be scheduled until at least the summer. This has been addressed in the approved Integration Plan and will not proceed unless all procedural and human factors issues on the flight deck have been adequately addressed.

Transport Canada has supported the process by having Air Carrier Inspectors on site at the various Flight Operations areas in Toronto and Vancouver. Transport Canada will liaise closely with Air Canada management and take whatever action is necessary to reduce the risk to safety, including, if necessary, the grounding of flights.

### JUSTICE

#### FEDERAL COURT DECISION—MAINTENANCE OF ESTABLISHED LINGUISTIC RIGHTS

*(Response to question raised by Hon. Jean-Robert Gauthier on March 29, 2001)*

The Federal Court-Trial Division released its decision at the end of business day on March 23, 2001. It is a very lengthy and complex decision. Legal counsel at the Department of Justice are presently reviewing the decision and considering the options of the Attorney General of Canada. The Attorney General of Canada is not in a position to comment further at this time. A decision on whether or not to appeal the decision must however be made by April 23, 2001.

It is important to note that the Court did not order the Department of Justice to amend the Contraventions Act. Rather, it ordered that the Department take the necessary measures, whether legislative, regulatory or otherwise, to ensure the respect of the language rights provided by sections 530 and 530.1 of the *Criminal Code* and Part IV of the *Official Languages Act*. Amending the Act would therefore be only one of a number of options.

### NATIONAL DEFENCE

#### REPLACEMENT OF SEA KING HELICOPTERS—CHANGES TO PROCUREMENT PROCESS

*(Response to question raised by Hon. J. Michael Forrestall on April 5, 2001)*

With respect to the Government's procurement process for the 28 new Maritime Helicopters, no new process is being established, nor has the Government excluded commonality savings from an approach that has been, and will continue to be, based upon fairness, openness and transparency.



This Government has not changed its Maritime Helicopter Project procurement strategy. Shortly after announcing the Project in August 2000, the Government released a Letter of Interest that outlined the Government's procurement strategy and confirmed that the project would involve two separate competitions. The first will pertain to the basic helicopter airframe and the second to the mission system and system integration. With respect to system integration, it will be the responsibility of the winning contractor of the mission system to modify the helicopter selected by the Government and to produce a fully integrated Maritime Helicopter. Long-term in-service support will also be an element of both competitions, thus ensuring that prospective suppliers will take long-term responsibility for any equipment they will sell.

Concerning the issue of commonality savings, if there are economies and efficiencies to be realized in having the same helicopter airframe and long-term in-service support for both the Search and Rescue as well as the Maritime helicopters, then this will be reflected in the respective bid prices submitted by the prime contractors. For example, the requirement for up to 20 years of maintenance and support with any bid will enable companies that have already sold their product to Canada to build into their bid price any benefits associated with having a common fleet. So, in fact, by its very nature, the Government's Maritime Helicopter procurement process facilitates the inclusion of commonality savings in the bidding process. At the same time, it must be remembered that the Search and Rescue Helicopter role and the Maritime Helicopter role are different and, hence, require different mission equipment.

### CANADIAN WHEAT BOARD

#### REGULATORY PROCESS FOR GENETICALLY MODIFIED WHEAT

*(Response to question raised by Hon. Mira Spivak on April 5, 2001)*

Before a GM wheat variety can be considered for registration, it must be assessed by the Canadian Food Inspection Agency (CFIA) for environmental and livestock feed safety and by Health Canada for human food safety. To date no application has been made by Monsanto for any safety assessments for GM wheat.

The current variety registration process is science-based and does not involve consideration of approvals in foreign markets (market acceptance).

The Prairie Registration Recommending Committee for Grain, which is responsible for testing and recommending new varieties, has provision for considering market risks for

wheat, but to date has never used it where a variety did not have approval in foreign markets.

In order to be registered, GM wheat varieties must meet, over three years of testing, scientific criteria for agronomic performance, disease reactions, and quality traits.

Since variety registration testing has not yet been initiated, it is highly unlikely a GM wheat variety will be eligible for registration before 2005.

[English]

### PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

**The Hon. the Speaker:** Honourable senators, I should like to introduce the new pages who are here from the House of Commons.

On my right, I introduce Shannon Headland, who is studying political science at the Faculty of Social Sciences of the University of Ottawa. Shannon is from Pointe-Claire, Quebec. Welcome.

[Translation]

Héloïse Robinson is a student at the Faculty of Arts of the University of Ottawa. She is from Victoria, British Columbia.

[English]

### ORDERS OF THE DAY

#### PATENT ACT

#### BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Wiebe, seconded by the Honourable Senator Corbin, for the third reading of Bill S-17, to amend the Patent Act.

**Hon. David Tkachuk:** Honourable senators, I am speaking to Bill S-17, not as spokesman for the bill but as chairman of the committee that studied the bill. Senator Lynch-Staunton will speak after me and address some of the issues, but I thought I would spend a minute on the process itself.

We had a good debate on the bill in committee. There was a spirited exchange between Senator Lynch-Staunton and, of course, Minister Brian Tobin. I urge everyone to read it. It is kind of fun. A few memories were brought up by Senator Lynch-Staunton that, I must say, the minister took with humour rather than defence. He is now an ally of our former position.

The last time patent legislation was amended, there was quite a debate that included big business and big politics. We were told that, Bill S-17 was introduced first in the Senate for certain reasons. This bill amends the Patent Act to comply with the WTO ruling against stockpiling. This bill must pass before the end of August to prevent the WTO from imposing sanctions on Canada, which would affect many businesses, not just those in the area of pharmaceutical drugs.

Both sides were heard on the issue of generic drugs and drug protection for the patent holders. There was a perplexing part in the process.

There was some unanimity. I will not speak for some Liberal members, but some demonstrated sympathy for the position of the senators on our side. Senator Lynch-Staunton suggested that observations and recommendations be attached to the committee report, which we would have agreed to do, but for some reason, the clerk said that that was out of order. We argued on our part that recommendations were not out of order, that we have done it before many times. Many of you sit on committees that have attached recommendations to a bill and which were later adopted at third reading in the Senate chamber. The advice given to our chairman was it was out of order. He ruled it out of order.

The Liberals passed the bill without the recommendations we talked about, but it was an issue I wanted to bring to your attention. We have used the word "recommends" before in an observation report. Our clerk gave us a document saying that it becomes an order of the Senate. Apparently, it makes the Officers of the Senate very uncomfortable, and if we look at what happens in other jurisdictions, perhaps we should not use the word "recommend." My view was if we all agree in committee to use that word and it comes to the Senate, the Senate itself can decide whether or not it wants to use it. It is not up to the committee members to decide. We could use the word "recommend," and the Senate then could decide to adopt or reject it. It would be an order of the Senate if senators so wished, or attached as an appendix if they wished to comply with the discomfort of the clerks.

In our case, the wrong advice was taken, perhaps not given, but certainly wrong advice was taken. We could have made recommendations that would have assisted us in showing our displeasure at what was not in the bill, rather than simply what was in the bill.

Honourable senators, I bring the matter to your attention because we will all have to deal with it in other Senate committee reports when we want to use that word, whether or not to accept the ruling. I will continue to insist that we set our own precedents and not follow the House of Lords or the Parliament of Australia. Perhaps we should set the precedent to use that word.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, as Senator Tkachuk implied, the contents of this bill need little discussion as they are the result of the fact that the World Trade Organization has upheld the challenges to

certain features of our Patent Act by the European Union and the United States. The Minister of Industry, when testifying before the Banking Committee, urged the Senate to move the bill along as expeditiously as possible, as Canada is in the forefront of countries that abide by their international obligations.

I agree, as I agreed in 1992, when a similar bill, Bill C-91 resulting from agreements under the GATT and the FTA, was laid before Parliament. The arguments used by Minister Tobin were the same then, and the government of the day was urging swift passage because of international obligations. The opposition, however, led by a number who are today senior members of the Liberal government, not the least the Minister of Industry, led an extraordinarily vicious charge against the bill, accusing Conservatives of being tools of the pharmaceutical industry and of legislating astronomical increases in drug prices. I am sure I am not the only one who was here at the time who recalls one senator, just prior to the vote on Bill C-91, accusing all those in favour of it of being beholden to its beneficiaries. It was not one of Parliament's more illustrious moments.

That senator retired unrepentant. The Minister of Industry before the committee did admit to a less than objective assessment of Bill C-91, to say the least. I commend him for that, as I do his commending Prime Minister Mulroney for initiating the FTA and the NAFTA, which he now fully supports.

Mr. Tobin obviously agrees with the "Liberal New Testament," which instructs all aspirants: "Repent, ye, for the leadership of the kingdom is at hand."

I want to spend a few minutes on the observations in the committee's report as they result from testimony on the nature of the industry and regulations governing it, which should be of wider concern than they appear to be.

I can think of no industry, certainly in Canada, whose members are not so much rivals as entrenched enemies, whose lack of respect for one another is nothing short of appalling. On the one hand are the pharmaceutical companies that innovate and create products that alleviate pain, save and prolong lives. On the other are the generics that pluck the most profitable of the original products, copy them and put them on the market at prices substantially below those of the original once the patents have expired. One considers the other a parasite. The other speaks of unconscionable profiteering. Canadians have reason, faced with such allegations, to be suspicious of how a drug policy may be established in this country.

If one assumes that patent protection were eternal, then the monopoly thus created would lead to perpetually high prices. This is true of any invention, not just drugs, of course. Patent protection is intended to allow the innovator not only to recoup the investment but also to profit from it. A limited patent protection is imposed in order that one not take unfair advantage of the innovation. Such a policy is in effect in every so-called advanced country and is well accepted and understood in Canada with the glaring exemption of the drug industry.



What the hearings brought out is that the regulations governing the industry allow drugs to be protected longer than the legislation intended or specifies, and passage of this bill will not change this contradiction unless the regulations are amended appropriately.

Bill S-17 is consistent with what is known as, and here I quote from the department's briefing book:

...the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) forms Annex 1C of the World Trade Organization Agreement (WTO) to which Canada is a signatory. Article 33 of TRIPS requires that WTO members provide a minimum term of patent protection of 20 years from the filing date.

Bill S-17 imposes the required 20-year protection, yet the regulations presently in force allow pharmaceutical companies, and only pharmaceuticals of all products protected by the same act, to extend protection by another two years. If an application for the generic equivalent of a patented drug is challenged in court as infringing another patent added to the same drug, the Minister of Health cannot issue what is known as a notice of compliance for up to two years, while the court challenge may take even longer to settle. The result is the equivalent of patent protection beyond the 20 years imposed by the legislator by delaying the entry of its generic equivalent.

Witnesses from the pharmaceuticals and from the generics are not very helpful in explaining the reasoning behind this exceptional regulation as each sees it in white and black. No regulation, no innovation, claims the first; regulation means higher costs and financial setbacks, claims the second. Such stands before the committee were of little assistance in getting a balanced appreciation of the controversy. Nonetheless, the committee did come to the following conclusion, which is part of its observations:

In general, it is the Committee's view that courts are fully capable of determining appropriate procedures, which should not differ substantially from one industry to another. Regulatory interference carries a risk that an unfair advantage may inadvertently be provided to one side or the other.

The report goes on:

Given the testimony suggesting that the cost and volume of related litigation was high, that a significant majority of the cases were ultimately lost by the patent holders, and that the patent holders gain an unintended benefit from the delay created, modifications of the regulations could be in order.

• (1450)

In his testimony, the minister said:

The intention should be to give 20 years of patent protection. The intention should be to avoid things which

would allow abuse to unnecessarily and, in an unearned way, to extend the period of patent protection. This I would agree with.

Finally, I wish to point out how the committee unanimously supported the minister by ending its report as follows:

The Committee, therefore, strongly urges —

Honourable senators will notice that the word is not "recommends," following the instructions of the chairman, but "strongly urges":

— that the Minister, in a future review of the legislation and regulations in question, ensure that they do not provide any of the parties implicated in patent protection with an advantage unintended by Parliament.

In addition, the Committee strongly urges any future proposed changes to regulations made under the Patent Act be tabled in both Houses of Parliament and automatically referred to appropriate committees for study and report within 30 sitting days of their being referred to Committee.

This is not the first time, as honourable senators know too well, that regulations have been gazetted and have not necessarily reflected the intent of the legislator, who in voting this bill will confirm that patent protection for drugs has to be, should be, and, by law, is to be limited to 20 years. If there is an argument for a longer period, let it be argued openly and Parliament can act accordingly. Otherwise, as the committee has done, let us urge for a revision of the regulations, keeping in mind that while corporate profitability is not to be ignored — far from it — consumer interests, particularly in the field of health, must always be paramount and, hopefully, the final determinant.

**The Hon. the Speaker:** Honourable senators, is the chamber ready for the question?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read third time and passed.

## CANADA BUSINESS CORPORATIONS ACT CANADA COOPERATIVES ACT

BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

**Hon. Michael Kirby** moved the third reading of Bill S-11, to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts.

**Hon. Donald H. Oliver:** Honourable senators, I am prepared to make my remarks today. However, because of negotiations, I would prefer to make my remarks tomorrow.

On motion of Senator Oliver, debate adjourned.



## SALES TAX AND EXCISE TAX AMENDMENTS BILL, 2001

### SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Rompkey, P.C., seconded by the Honourable Senator Hervieux-Payette, P.C., for the second reading of Bill C-13, to amend the Excise Tax Act.

**Hon. C. William Doody:** Honourable senators, I have just a few comments to make on the bill that is now before us. Senator Rompkey explained in great detail on Thursday last that this bill is simply a collection of more or less technical amendments to the Excise Tax Act. It is a bureaucrats' bill put together for and on behalf of the officials of the Department of Finance.

There is some small tax relief in this bill. For instance, I am sure the good taxpayers of Canada will be thrilled to hear there is some tax relief on air conditioners installed in automobiles and new heavy automobiles. However, I am sure the various changes proposed in the bill to the GST/HST can be examined in detail and explained at length by those who will appear before the Senate committee to which Bill C-13 is referred.

Thus, honourable senators, with the exception of the new residential rental property rebate, the amendments contained in this bill do not have significant revenue costs. In other words, the GST is not significantly changed, and this rebate will only save the taxpayers of Canada some \$15 million this year.

Therein, honourable senators, lies the puzzle. When this bill reached my desk, I eagerly opened it, reading it very carefully. I fully expected the current government to leap on this golden opportunity, if not to abolish the terrible GST, then at least to lower it materially. The government could even outline a schedule of reductions leading to its elimination, say, in five years hence. However, there is nothing like that at all in this bill.

We who sat in this chamber when the GST was introduced remember full well the reception the tax received from honourable senators opposite. There was the rage, the rhetoric and the passion. There was hour after hour of mind-numbing filibuster, countless pages of Hansard filled with readings from the Ottawa telephone directory, the bells, the whistles, the shouts, the kazoos — on and on it went. However, the majority party in this place now has a legitimate and reasonable opportunity to put their money where their kazoos were.

What do they offer us, honourable senators? They offer the Canadian taxpayers tax relief on automobile air conditioners. At the very least, I expected an amendment removing the tax on books and other reading material.

I remember well, as do many of us, Senator Fairbairn's poignant and very moving plea on behalf of the Canadian literacy cause. Her proposed amendment at that time would have exempted reading matter. Perhaps she will reintroduce her

amendment at second reading, or in committee, or even at the third reading stage of this bill's progress through this place. There is time to bring such an amendment forward and time to bring forward the other amendments about which honourable members opposite were so enthusiastic just a few years ago.

It is not as if Liberal senators can be accused of opposing their own party's position on this matter. Their own leader, Mr. Chrétien, promised to rescind the bill if elected — and he has been elected again twice. The Minister of Finance himself, Mr. Martin, once told the House of Commons that the GST is "a stupid, inept and incompetent tax." As a candidate for the Liberal leadership, he said, "I am committed to scrapping the GST and replacing it with an alternative." Perhaps the honourable minister might want to appear before our committee to explain and outline his proposed alternative.

In any event, honourable senators, I will not take up too much time. I want to leave plenty of opportunity for my friends opposite to bring forward the amendments that they so ardently and passionately advocated a few years back. I promise them my undying and enthusiastic support for any amendment they bring forward.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Robichaud, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.

## CANADA FOUNDATION FOR SUSTAINABLE DEVELOPMENT TECHNOLOGY BILL

### SECOND READING—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Sibbeston, seconded by the Honourable Senator Chalifoux, for the second reading of Bill C-4, to establish a foundation to fund sustainable development technology.

**The Hon. the Speaker:** Honourable senators, the Honourable Senator Cochrane has the floor.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I thought that Senator Cochrane was going to address Bill C-4. I would not want her to miss this opportunity to speak. I am sure that honourable senators would like to hear what Senator Cochrane, who just joined us, has to say concerning this bill.

[English]

• (1500)

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, my colleague Senator Cochrane will speak on this bill in due course. I would suggest that we continue with the Orders of the Day and revert back to this item.

**The Hon. the Speaker:** To be clear, this matter will be returned to either for adjournment or to be spoken to later under Government Business. Is that agreed, honourable senators?

**Hon. Senators:** Agreed.

Order stands.

## JUDGES ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

**Hon. Jeremiah S. Grafstein** moved the second reading of Bill C-12, to amend the Judges Act and to amend another Act in consequence.

He said: Honourable senators, I am pleased to be able to introduce debate on second reading of Bill C-12, to amend the Judges Act and to amend another act in consequence thereof. This bill encapsulates amendments to the Judges Act to ensure fair and appropriate compensation for the federally appointed judiciary in Canada. The purpose of this bill is to legislate commitments made by the government in its response to the report of the 1999 Judicial Compensation Benefits Commission.

The independence of the judiciary is a self-evident characteristic of a free and democratic nation. Peace, order and good government, indeed responsible government, as mandated by our Constitution cannot be realized without judicial independence.

Our 1867 Constitution implicitly incorporated the common-law traditions of Britain. As the late Mr. Justice Bora Laskin, former Justice of the Supreme Court, reminded us in 1969 in a series of lectures called the "British Tradition in Canadian Law," the appointment of judges was originally in the hands of British authorities as a matter of Royal Prerogative. With Confederation, the appointing powers of superior, county and district courts of the provinces were vested by section 96 of the Constitution in the federal government. Removal also was in the hands of the federal government via a Governor General's address to both Houses of Parliament under section 99. By the 1960 constitutional amendment, the theoretical lifetime appointment was changed to compulsory retirement for judges at the age of 75.

Honourable senators should recall the complex and tangled British history of judicial independence. In 1649, Cromwell's Commonwealth abolished the monarchy, abolished the House of Lords and ensured that the judiciary reflected the will of the

executive. Yet, by 1688, the Act of Settlement introduced what some historians have called the glorious and, I might add, bloodless revolution — the Restoration. With the Act of Settlement and subsequent acts, the monarchy was restored, the House of Lords was restored and the independence of the judiciary was finally settled.

It was from these historic strands that the great Blackstone divined and articulated the blessings of our mixed form of governance wherein the executive, resting in Parliament, was to be balanced and checked by the legislative powers of each House of Parliament, both the Senate and the Commons, and each other. The separation of judicial powers by an independent judiciary acted as a further check and balance. All this was to work in our mixed form of governance.

As the late Justice Laskin pointed out:

There are two features of judicial provisions of the Canadian Constitution which have uniqueness. First, there is the provision that the judges...are to be federally appointed and paid, although the courts themselves are to be constituted and organized by the respective Provinces.

The second "unique aspect" was the conference of power upon Parliament to establish courts for the better administration of laws. In Canada, unlike other jurisdictions and other nations, federal judges could judge both federal and provincial law.

Honourable senators will recall the division between courts in the United States. Federal courts deal with federal law and state courts deal with state law. That is not the case in Canada.

The Supreme Court of Canada Act was established in 1875. In 1913, His Majesty George V bestowed the title "honourable" on judges. Judges, like senators, could be called "honourable." After 1949, following the 1931 Statute of Westminster and section 101 of the British North America Act, the exercise of ultimate criminal and civil appellate jurisdiction was finally in the hands of the Supreme Court of Canada. The Privy Council of the British Parliament, as Canada's final appellate authority, was supplanted then by our Supreme Court of Canada.

In the 1960s, the Supreme Court of Canada, in a series of decisions, slowly changed the principle of *stare decisis* with respect to its own decisions. In effect, it said that it would not be bound by its own decisions. With the advent of the 1982 Charter, the courts roles have changed. The contest between parliamentary supremacy and judicial activism was joined.

Honourable senators, there is in this country a raging, visceral debate currently among legal scholars, the legal profession, Parliament, various segments of the public and judges as to the proper circumference of judicial action when it comes to the interpretation of the Constitution. Where should judges draw their own line? Some opine for greater generosity of interpretation and others for judicial restraint. As for me, I believe that judicial independence is the consideration for judicial restraint and judicial responsibility.



Judicial activism can have both negative and positive perceptions, negative and positive side effects. Activism is not only in the eye of the beholder, as some judicial commentators may have suggested.

Honourable senators, let me give you several quotes from judges that indicate the range of opinion on this very important question — that is, the role of Parliament as opposed to the role of judges.

I will turn first to an article written by Justice Bertha Wilson that appeared in the *University of Toronto Faculty of Law Review* in 1986. She referred to a 1976 decision of the Supreme Court that was pre-Charter. I quote what Mr. Justice Dickson said on page 233 of the Supreme Court case of *Harrison v. Carswell*.

The duty of a court, as I envisage it, is to proceed in the discharge of its adjudicative function in a reasoned way from principled decision and established concepts. I do not for a moment doubt the power of the Court to act creatively — it has done so on countless occasions but; manifestly one must ask — what are the limits of judicial functions?

Later in that decision, he said:

If there is to be any change in this statute law...it would seem to me that such a change must be made by the enacting institution, the Legislature, which is representative of the people and designed to manifest the political will, and not by the Court.

That is what Mr. Justice Dixon said in 1976.

Madam Justice Wilson, in an article in 1986, gave her view of the same issue. Remember, this is post-Charter. There is a difference.

The enactment of the Constitution Act, 1982, particularly sections 1, 24, and 52, seems effectively to remove the rationale for judicial restraint by casting the judiciary in a clearly interventionist role. We can no longer rely on the doctrine of supremacy of Parliament as the reason for staying our hand.

She says the following later in the same reference at page 259 of the same article:

Judicial protection of individual and minority rights vis-à-vis the majority clearly requires a distinct segregation of the courts from the majoritarian machinery of the legislatures and the Parliament.

A further article by then Madam Justice McLachlin, before she became Chief Justice, appeared in the *Alberta Law Review* in 1991.

• (1510)

I will not take it out of context, but it is important to read both articles and it is important to point this out, from page 554:

Finally, unlike the American situation, Canadian Legislatures retain ultimate control over most issues by virtue of the override provision. Section 33 of the *Charter* gives the Legislatures the right to override the Court's rulings on all but a few Charter rights, subject to the condition that overriding legislation be reviewed within five years. While it may be politically difficult for Legislatures to rely on the override provision, the fact remains that it provides protection if it is perceived that the Court has stepped out of line. Thus, judicial intervention in Canada may not be seen by Legislatures as threatening their supremacy in the same way that has occurred in the United States.

Honourable senators, obviously within the confines of this bill we will not settle this issue. We need more parliamentary debate about the rationale and the limits for judicial activism. Parliament is at fault. Legislation that lacks clarity is an invitation to judicial activism. That in turn degrades the principle of parliamentary supremacy. So the fault, honourable senators, may lie with ourselves.

Prime Minister Chrétien succinctly captured one aspect of an independent judiciary when he stated recently:

For no matter how well the laws are written, there can be no justice without a fair trial overseen by a competent, independent, impartial and effective judiciary. A judiciary that applies the law equally for all citizens, regardless of gender, social status, religious belief, or political opinion.

Now who can disagree with that?

The three constitutionally required elements of judicial independence are security of tenure, independence of administrative matters relating to the judicial function, and financial security. It is directly in support of the principle of judicial independence that section 100 of the Constitution entrusted the fixing of judicial salaries, allowances and pensions to Parliament in 1867.

A brief history of the evolution of the Judges Act provisions relating to compensation I think would be helpful to the Senate. The first legislation establishing judges' salaries was enacted immediately after Confederation in 1868. Since that date, Parliament has been regularly presented with proposals relating to judicial remuneration. Provision has been made from time to time for various allowances as well.

In 1981, the Judges Act was amended to provide for yearly adjustments to salaries, also known as statutory indexing, in order to take into account changes in the cost of living.



As with salaries, pension arrangements have also evolved through legislative amendment since Confederation. Between Confederation and 1960, a judge was entitled to a pension of two-thirds of a salary after 15 years of service with no minimum age requirement. In 1960, certain minimum age requirements were imposed and these requirements have been adjusted from time to time since then.

You will recall, honourable senators, that in 1960 that was a constitutional amendment.

For example, in 1998, Parliament introduced what is known as the "modified Rule of 80": that is a full pension with a minimum of 15 years of service when age and years of service totalled 80.

Another important change was made in 1975 when judges were required for the first time to contribute to the cost of their annuities in the amount of 7 per cent.

An important process change was implemented through the Judges Act in 1981. Until then, judicial compensation had been reviewed by ad hoc advisory committees which were established from time to time and reported to the Minister of Justice.

In 1981, recognizing the importance of receiving objective advice with respect to judicial financial security, Parliament established a Judicial Compensation Commission to inquire into and make non-binding — I repeat, non-binding — recommendations with respect to the adequacy of salaries, pensions, and allowances.

In 1998, Parliament further amended this process in order to further enhance the commission's independence and objectivity. In support of the well-established principle of judicial independence.

A more important element of this enhanced process is the set of statutory criteria which guides the commission in the formulation of its recommendations. Need I remind honourable senators that those criteria were introduced as a result of an amendment proposed in the Senate and agreed to by the House of Commons.

You can applaud yourselves, honourable senators. It was a great stroke on behalf of judicial independence, and perhaps the judges should be reminded from time to time about how the Senate acts as a safeguard of judicial independence.

Of course, it must be remembered that the commission's recommendations are not binding. It is on Parliament that the Constitution has conferred the exclusive authority and the responsibility for establishing judicial compensation. However, where Parliament decides to reject or modify the commission's recommendations, it is legally and constitutionally required — I believe it is so stated in the law — to explain publicly a reasonable justification for this decision, this variance.

Through Bill C-12, the government is proposing implementation of most of the recommendations of the Judicial Compensation and Benefits Commission, including proposed salary increases and some modest improvements to pensions and allowances. In light of all the factors considered by this independent commission, including trends in both the public and private sectors, the government is of the view that the proposals in Bill C-12 fall within the range of what is reasonable and adequate to meet the constitutional principle of financial security and the implicit constitutional principle of judicial independence.

That said, the government is not prepared to implement all the commission's recommendations. Specifically, the government will defer a proposal that would increase the number of supernumerary or part-time judges pending the outcome of important consultations with the provinces and the territories.

Under the Constitution, while the federal government is responsible for the appointment of judges, it is the provinces that are responsible for the administration of the courts in each province, aside from the territories.

In addition, the government has not accepted the commission's recommendation with respect to legal fees as the commission's proposal does not establish reasonable limits for these expenditures. Instead, the government proposes a statutory formula designed to provide for a reasonable contribution to the costs of the participation of the judiciary while at the same time limiting their scope.

The Government of Canada, honourable senators, is committed to the principle of judicial independence as it is a fundamental precondition to ensuring the vitality of the rule of law in our democratic system of government. The government, as Parliament, can do no other. Moreover, it is our constitutional duty to ensure the economic health and viability of the appropriate checks and balances in the separation of powers and to facilitate peace, order and good government through our Constitution.

We have to ensure that the judiciary is economically healthy and viable in order to fulfil its function.

In conclusion, Canadians agree that Canada is blessed with a judiciary renowned for its learned competence, its professional commitment, its independence, its impartiality and its integrity.

It is precisely to safeguard the principle of judicial independence that the government has brought forward Bill C-12 and recommends it to the Senate for consideration.

**Hon. Lowell Murray:** May I ask a question?

**The Hon. the Speaker *pro tempore*:** Senator Grafstein, will you accept questions?

**Senator Grafstein:** Always.

**Senator Murray:** As the sponsor of the bill, Senator Grafstein has given us a very complete account of its provisions. He has combined that with a highly interesting editorial comment of his own which I presume he would acknowledge is his own and not necessarily that of the Minister of Justice. However that may be, I should like Senator Grafstein to address — perhaps after some thought, at third reading — exactly where he thinks former Justice Bertha Wilson is wrong in her interpretation of the situation as it exists post the 1982 Charter.

Second, I was quite interested in the senator's comments on how Parliament should deal with bills about which there seems to be a question of constitutionality. He will recall, as I do, more than one bill coming here which gave rise to very substantive debate in this chamber as to the constitutionality of the bill.

I can recall, as he will, more than one bill that went through second reading and went to committee where we had a veritable parade of legal and constitutional experts testifying and the weight of their testimony was that the bill was, in one respect or another, unconstitutional. Nevertheless, we went ahead and passed the bill in at least one case based on this argument:

It is not for us to determine whether a bill is constitutional; that is the job of the Supreme Court.

• (1520)

The honourable senator will know that the Minister of Justice must certify the bill before it leaves the cabinet process. The Minister of Justice gives it his imprimatur for consistency with the Charter of Rights. A similar process existed with former Prime Minister Diefenbaker's Bill of Rights: The Minister of Justice was required to sign off on the bill in respect of its consistency with the Bill of Rights.

The Minister of Justice will not advise us and will not discuss these matters with us. Her position has always been to advise the Crown, not Parliament. Is there a way in which we, honourable senators, might interpose ourselves? Is there a process whereby, if we have serious questions as to constitutionality, we could require the Minister of Justice to attend to try to put our concerns to rest?

Honourable senators, my colleague may not want to deal with these matters today, but he will have another opportunity to do so at third reading.

**Senator Grafstein:** Senator Murray raises important questions, and he is quite correct in that the speech is mine, and the legislation is the government's. I do not want the Minister of Justice to take the credit for my speech in the Senate. Perhaps honourable senators were able to define the differences between my own personal view and the views of the government. I

support the legislation wholeheartedly for all the reasons that I suggested.

The honourable senator has raised the most difficult question that confronts this Senate from time to time, and that is: How far are we as senators required to articulate or define carefully crafted definitions in legislation to ensure that Parliament is supreme, as opposed to leaving it in the hands of the judges to make that determination?

Honourable senators, I have spoken with judges, and it comes as no surprise that the more open the process is, the greater the invitation becomes. It is a matter of where you draw the line. The first duty and responsibility of the Senate is to satisfy itself that no piece of legislation passes this house, by whatever means, unless both Houses of Parliament are satisfied that the bill meets compliance with the Constitution. That is the primary responsibility of the Senate in respect of legislation.

It is more difficult by the Charter and, during the constitutional debates, we were warned that this would open up judicial activism. However, this fact is not new.

In the course of preparing the research for Bill C-12, I examined the American experience, which was interesting. It can be carefully summed up by the contesting views of two Supreme Court Judges of the United States, when in *Marberry v. Madiso* Chief Justice Marshall made it clear that the court could determine whether legislation passed by the American Congress was contrary to the Constitution. It too about 30 or 40 years after the Constitution to establish that principle; and it was done by common law. The debate then began, and it continues today in the United States, as to whether you should be a strict constructionist, as it applies to the Constitution, or should the judges impute their own determinations in the quantity or quality of a particular bill.

Honourable senators, our tradition is different from that of the United States, and I went to some lengths to determine that fact. We have a separation of power, but it is judicial power. Legislative power remains supreme in only one place, Parliament — the House of Commons and the Senate. Legislative power is not in the executive. The executive proposes, and then it is a matter for Parliament to deal with that proposal. That is the essence of our duties and responsibilities, honourable senators, in my reading of our constitutional responsibility.

I say to judges, "Do not go on a frolic of your own. We will give you judicial independence and we will defend it, because that is our tradition. We will give you economic viability to ensure that you have a good life and can benefit from that. However, the consideration for that is judicial restraint." Judges must not import their own particular views and try to supplant the view of Parliament: the view of the people as represented by the two Houses of Parliament.



Honourable senators, that is the notional theory and, in practice, it is difficult to uphold. Last week there was a decision precisely on this point, that is, whether a judge can take it upon himself or herself to determine that a law is, in effect, contrary to legislation. That is an onerous duty. I am of the Laskin school, the Blackstone school, and that is, if a judge is given the power of judicial independence, free of restraint and free of public attack — unlike the judges in the United States, some of whom are elected — then that judicial power must be exercised with great restraint. A judge must be very careful and prudent.

That is the best judgment I can make in this matter. If other honourable senators have a differing view on this, it may be useful to have this debate at third reading.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, Senator Grafstein alluded to the principle of Parliamentary Supremacy. I recall the debate in the early 1980s in respect of the extent to which Parliamentary Supremacy could be affected by a constitutionally entrenched Charter of Rights and Freedoms. We took comfort in the fact that, when the United Kingdom became party to the European Convention on Human Rights, that act effectively placed a limit on the principle of Parliamentary Supremacy for the mother of all parliaments.

Given this post-Charter reality that is ours in Canada today, all honourable senators are uncomfortable when the judiciary is subjected to attack because of “judicial activism.” However, the reverse of that is constitutionalism, or constitutional “legislativism.” Would you not agree, honourable senators, that the onus is more upon the legislative branch in a Charter environment to submit every legislative proposal to careful constitutional compliance scrutiny? That may be seen as the legislative branch becoming a judiciary, and that is precisely what must occur in this new environment, just as the judiciary becomes active or legislative.

Therefore, honourable senators, if some are surprised because the courts are described as being active, then why are they not equally surprised by legislative branches that focus on the Constitution. In effect, perhaps we ought not to be surprised, but rather to understand that as our new duty in the Charter environment.

**Senator Grafstein:** Honourable senators, the impetus for international human rights legislation around the world was precisely because those countries that required human rights legislation did not have their own rights firmly established in a Constitution. They did not have an independent judiciary. Thus, we have imposed a kind of international law upon ourselves, as well as others, to induce that type of democratic behaviour. In Canada, by doing that, it does not relieve us of our responsibility under the Constitution, which is that we have the exclusive right to legislate — to make law. The judges have the exclusive right to interpret the law. There is a difference.

Honourable senators, that is difficult, and the only way to debate that is by specific example. If my colleagues and I have different views, at the end of the day the question is: Is it an interpretive issue, or is it a legislative issue? We happen to be exclusively obligated under the Constitution to make law. The interpretive power belongs to the courts. Therefore, Senator Kinsella is right: We should not pass a piece of legislation unless we are satisfied individually and collectively that it meets the Constitution.

• (1530)

Returning to Senator Murray's point about opinions, there are opinions, and then there are opinions. The Department of Justice must have an independent opinion that every piece of legislation that comes through this place is constitutionally appropriate. That is an opinion given to the Minister of Justice in her capacity as the chief law officer of the Crown. Honourable senators have an independent role to challenge that view enunciated by the minister to determine whether the view is correct.

**Senator Murray:** The government will never engage us in that.

**Senator Grafstein:** I understand that, but I am not frustrated in that exercise. To my mind, that is our responsibility. We have staff and funds and can certainly come to an independent determination and satisfactory opinion about every piece of legislation.

I am interested in the minister's view and am satisfied in large measure that the minister has satisfied the requirements for meeting the constitutional requirement. However, from time to time we have a difference of opinion. As it turns out, that happens only in a small number of pieces of legislation. Yet it has been those pieces of legislation that have turned out to be the most controversial and have taken the time of the house.

I conclude that the system is not bad. However, it is not fair to criticize judges if we do not take our own legislative responsibilities seriously.

**Senator Kinsella:** My question to Senator Grafstein focuses not on the role of interpreting that the judiciary exercises, but rather the remedies they apply, having interpreted a matter. In particular, I am concerned about the remedy of reading into legislation that which either is not there or is given added weight, particularly something that the legislators had expressly rejected but is some how accepted after a reading of the debates of a given assembly.

**Senator Grafstein:** Again, that is Parliament's fault. The Constitution lays out principles. The Charter outlines our basic rights. When we have a piece of legislation, it is up to both Houses of Parliament to ensure that those rights are carefully delineated. When we leave open questions, that extends an invitation to the courts to do what they do.



Part of the problem is that the Constitution sets out basic principles and rights, but does not establish how those rights would interact with other rights within a piece of legislation. No right is absolute. There are some limits to every right that are eventually played out in a piece of legislation. The government proposes legislation. It is our job to determine its correctness. Again, it is easy to say, but more difficult to do.

**Hon. Anne C. Cools:** Honourable senators, I am interested in what Senator Grafstein has been saying. I am fascinated by some of the exchanges. The thrust of what Senator Grafstein has been saying is that Parliament must take its responsibilities seriously, with which I think we all would agree. In addition, I understood him to say that Parliament must be especially loyal to the Constitution and Parliament must be especially diligent in ensuring that the Constitution is adhered to as closely as possible.

Senator Grafstein was speaking to us about Bill C-12, the object of which is to give a pay increase, or to arrange the salaries of the judges. I have in front of me the BNA Act, and I am looking in particular at the sections on the judicature to which Senator Grafstein alluded. In particular, I am looking at section 100. Section 100 says, in part:

100. The Salaries, Allowances, and Pensions of the Judges of the Superior, District, and County Courts...shall be fixed and provided by the Parliament of Canada.

This particular section of the BNA Act has a long history that can be traced to the struggle in the English courts.

My question to Senator Grafstein is this: Is he convinced that the bill before us is an example of a salary being fixed by Parliament? Would it not be truer to say that the salary has already been fixed elsewhere and is only being provided by Parliament? Would that not be a more accurate description of that section of the BNA Act?

The individuals who brought this section of the BNA Act into existence were proficient. This concept has a long history in Canada that few people seem to know or care about. These issues go back to the Act of Union and the rebellions in Upper and Lower Canada. This was a peculiarly Canadian phenomenon that sought settlement in this section of the BNA.

Is Senator Grafstein able to say that, in Bill C-12, we are fixing and providing the salaries of judges?

**Senator Grafstein:** I believe, in a fair reading of the bill, we are fulfilling our constitutional responsibilities under section 100; that is, fixing and providing the salaries as pointed out in that section. When we convene in committee, I believe I will be able to point out to the satisfaction of the senator that that is the case.

**Hon. Serge Joyal:** Honourable senators, I should like to make two comments following on Senator Murray's intervention. First,

I wish to mention that Senator Murray was, to a point, partially right when he said that the Minister of Justice must certify that a bill conforms to the Bill of Rights or the Charter. That section of the Canadian Bill of Rights deals only with the House of Commons; it does not deal with the Senate.

In other words, when a bill is introduced in the Senate, the Minister of Justice is not under any obligation to certify that the bill is in conformity with the Bill of Rights or the Charter. That is illustrated in the bill I have introduced. Bill S-8, in clause 5, aims specifically to include the Senate as one of the two chambers that must be informed by the Minister of Justice that a bill is in conformity with the principles enshrined in the Bill of Rights or the Charter.

**Senator Murray:** Does that obligation run to private members' bills as well as government bills?

**Senator Joyal:** The obligation pertains only to government bills. When we debate Bill S-8, we will have an opportunity to discuss the status differences of the chambers in relation to that obligation.

I also wish to draw to the attention of Senator Grafstein the issue of what kind of authority should be given to a certification given by the Minister of Justice that a proposed bill is in conformity with the Bill of Rights or Charter of Rights. Let me give an example that we experienced in the previous Parliament in the form of Bill C-40.

• (1540)

Clause 44 of Bill C-40, the extradition bill, dealt with the death penalty. The Minister of Justice appeared as a witness before the committee and we asked the minister that question. The Minister of Justice assured us that this clause of the bill was in conformity with the Charter. That was the opinion of the Department of Justice.

Two years later, on February 15 of this year, nine justices of the Supreme Court said that it was in violation of the right to life enshrined in the Charter — nine to zero, in other words. The Minister of Justice was, unfortunately, blatantly wrong.

Therefore, what is our position as parliamentarians? The certification illustrates a *prima facie* case that this is in conformity, but it does not relieve us of the obligation to go beyond.

Another example that we experienced in this chamber a year ago is Bill C-20, which excluded the Senate. Many senators on both sides argued that the exclusion of the Senate from that bill was unconstitutional. We were assured by Department of Justice representatives that it was constitutional. We all know that the issue is not settled. Perhaps one day it will be settled by the court, but simply because there is a bill and certification does not

mean that the question closed. It is our duty as parliamentarians to listen to the experts brought forward by the government and various other witnesses who appear before committees and to make up our minds as to whether the bill is in good standing with the Charter or the Constitution.

That is a very important element, honourable senators. If we do not conduct that exercise, we open the doors to further scrutiny of the legislation by the court. We cannot have it both ways. If we do our duty, as senators and parliamentarians, of going beyond the given opinion and satisfying ourselves individually that something is in conformity with our interpretation of the Charter and the Constitution, then we can be assured that we have done our duty in all good conscience and knowledge on the basis of the information available. If we simply accept the certification of the Department of Justice and say that the matter is closed, on some issues we will miss the point and the court will remind us that we have failed in our duty.

**Senator Murray:** What is our remedy? Will we set up a system of law lords in this place, people who are learned in the law and in the Constitution, and take a vote among them as to the constitutionality of a particular measure that is before us? If so, then what? Will the rest of us decide to stop a measure right there and not pass it because we believe it contains an unconstitutional provision? Is that our role?

We also get into situations where a good number of senators or members of the other place say, "Stop right there; refer it to the Supreme Court of Canada for an opinion." I do not like that recourse. It seems to me that we are creating a third legislative body if we start routinely sending bills about which we have some doubt off to the judges for their opinion before we pass them.

**Senator Grafstein:** As I indicated, the underlying principle in the Constitution is peace, order and good government — common sense and good government. Good government means that we do not pass bills that open the door to citizens saying that their rights have been affected by the legislation, thus driving them to the courts. Good government requires that we have *prima facie* satisfied ourselves independently that the law we are passing is constitutionally satisfactory.

There is a curious section in the Constitution Act, 1867, that has never been fully delineated to me, that being section 18, which relates to the legislative power. I have always been interested in our power. Section 18 states, in part:

The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the Members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed,

and exercised by the Commons House of Parliament of the United Kingdom of Great Britain...

In effect, all the powers of the commons, who are members of Parliament, was invested in the two Houses here. Therefore, getting back to the British tradition, if the House of Commons satisfies itself, as the mother House of Parliament, the bill is constitutionally correct. They do not have a written constitution, but they are replete with laws. In fact, from time to time the courts have dealt with the question of unconstitutionality in the lords.

My view is that we are invested with full powers and our responsibility is peace, order and good government; that good government means good law and good law means that it must not be so imprecise that it is open to the citizens to apply to the courts to have their rights, which we are supposed to protect and define, upheld. It is a question of good governance, and it makes common sense.

**Senator Kinsella:** Would Senator Grafstein agree that the policy principle behind the certification by the minister under the Canadian Bill of Rights and the certification which is the practice under the Charter is to have the drafters sensitized to the reality that their minister will have to issue the certificate so that the drafters, in drafting, must keep the Charter and the Bill of Rights in mind, as well as, hopefully, our international obligations? It is not that there is any guarantee. This is an opinion that one gets from the Minister of Justice. Therefore, when the House of Commons and the Senate examine a legislative proposal, we are obligated to take into consideration the testing of this measure against the Charter and these other standards. There is no guarantee that we will be right because at the end of the day a tribunal, in exercising its interpretation responsibility, may interpret that this bill, which was adopted by the Senate, was contrary to the Charter.

**The Hon. the Speaker:** Honourable senators, before recognizing any other senator, I observe that the 45-minute time period for Senator Grafstein's speech, comments and questions has expired. Is leave being requested to extend the time?

**Senator Grafstein:** I am prepared to spend a few more minutes on this issue, but I do not want to interfere with the order of the house. We are scheduled to go into Committee of the Whole. All of these questions are quite appropriate to be asked in committee. I am prepared to respond in committee. They are also appropriate for third reading debate.

I am prepared to accept, as a question of practice and policy —

**The Hon. the Speaker:** I believe that Senator Grafstein is asking for leave to continue. Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Grafstein:** I will answer any other questions later.



When the Minister of Justice, the senior law officer of the Crown, seeks advice about a particular matter and satisfies herself as to the validity of that particular view, I do not think I need to interfere with that exercise of her power and her rights. However, that does not relieve me of my obligation as a parliamentarian and a senator to satisfy myself, upon studying the legislation, as to whether that view is correct. That is the difference that I have with Senator Kinsella's point of view.

I notice that other senators wish to ask questions. I am in the hands of the Senate. I am prepared to answer, but I do not wish to take the time of the Senate.

**The Hon. the Speaker:** The time has been extended for the speech of Senator Grafstein and any comments and questions thereon.

**Senator Cools:** Honourable senators, I should like to defend the Minister of Justice, Anne McLellan, in response to what Senator Joyal said in respect of capital punishment in the extradition bill. There are many instances when the minister is wrong, but in this particular instance she was right.

• (1550)

Perhaps this matter should have a fuller debate at some point in time, but perhaps we should not focus on the salaries of judges in Bill C-12. We must be sensitive to the fact that we cannot be seen to be supportive only of those decisions of judges that we like, and opposed only to those that we do not like. The fact of the matter is that the minister of the Crown was very much within her rights, and she was very right in the law. The fact is that the judges encroached and entrenched. If we were really attentive parliamentarians, we would be studying that matter closely. I believe in that particular decision, the court was playing the role of an activist.

Many of us felt very strongly about Bill C-20, the so-called Clarity Act. Here again, the criticism is a little peculiar. Yes, many of us asserted that bill was wrong and unconstitutional. We must be careful in today's community to say what we mean by "unconstitutional." I mean that it was against the law of Parliament and sometimes against the law of the prerogative. When some people say "unconstitutional," they mean it goes against the Charter. The fact of the matter is that Bill C-20 was brought to us as a bill supposedly in obedience to an opinion of the Supreme Court given to the Minister of Justice at the request of the Minister of Justice, Allan Rock at the time, in response to his questions on national unity and secession. It would seem to me, honourable senators, that if we want to avoid some of those problems, perhaps those questions should be answered by the Parliament of Canada and not be attempted to be answered by the Supreme Court of Canada.

**Hon. Sheila Finestone:** Honourable senators, I find this debate fascinating. I thought the debate would be addressing salaries for judges. I thought that is what this bill was about. It

seems to be focussing on good laws and good governance and who has responsibility and the symbiotic relationship between the legislators and legislation and judges and justice issues, both in the Charter and in the Bill of Rights.

I believe we are about to receive the Commissioner of Human Rights. It struck me that the Human Rights Tribunal is an administrative tribunal that has had an important impact on the life and finances of our country, particularly with respect to the pay equity decision which cost our government about \$3 billion. In my opinion, it was money well spent to correct a mistake.

The tribunal and the judges of the tribunal, who are administrative judges, are not included in this particular Judges Act. It strikes me that these judges are equally important in interpreting good governance and interpreting the rule of law. Would it be out of order to ask the honourable senator if they should have been included in the term? Does "judges" not also include administrative tribunal judges?

**Senator Grafstein:** Absolutely not. Under the Constitution, it is absolutely clear that judges are our responsibility. The honourable senator raises an entirely different question, and that is the extent to which the executive, by legislation, can delegate responsibility to an independent tribunal. It is a different question and, in a way, it is comparing apples and oranges. If the honourable senator wishes to explore that question when the commission appears before us, then, so be it.

The honourable senator should read the Lord Hewitt treatise of 1929. He warned that Parliament was being eroded by excessive delegation of power to subordinate agencies. Again, a government becomes more complex and the role of Parliament becomes more difficult, more and more we see the parliamentary supremacy being eroded because we delegate complexity to agencies. That is a different issue, and honourable senators may join in a debate on that if it they wish to do so.

On motion of Senator Nolin, debate adjourned.

## SIR JOHN A. MACDONALD DAY AND SIR WILFRID LAURIER DAY BILL

THIRD READING—DEBATE ADJOURNED

**John Lynch-Staunton (Leader of the Opposition)** moved the third reading of Bill S-14, respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day.

Honourable senators, before I move third reading, I should like to point out to honourable senators that this bill attracted 15 senators to the Social Affairs Committee last week when it was being discussed. The committee was in competition with a royal event on the other side, so it was certainly very flattering that 15 senators found the time to discuss not only the bill itself, but also the state of Canadian history today.



The general feeling was that the bill, in its own way, will allow Canadians to get to know more about their history through these two great Canadians to whom the bill will dedicate a day to each. I trust that the House of Commons will follow suit. To show the non-partisan aspect of this bill, John Godfrey, the Liberal member for Don Valley West, has agreed to sponsor it in the other place. The Progressive Conservatives sponsored it here, it received unanimous approval in the committee, and Mr. Godfrey will, I hope, on the other side, be able to draw the same kind of support. I thank all honourable senators for the consideration they have given this bill. I now move third reading of the bill.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

Bill read third time and passed.

## PUBLIC SERVICE WHISTLE-BLOWING BILL

THIRD READING—DEBATE ADJOURNED

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition)** moved the third reading of Bill S-6, to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers.

On motion of Senator Kinsella, debate adjourned.

## CONFERENCE OF MENNONITES IN CANADA

PRIVATE BILL TO AMEND ACT OF INCORPORATION—REPORT OF COMMITTEE—DEBATE SUSPENDED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill S-25, to amend the Act of incorporation of the Conference of Mennonites in Canada, with an amendment) presented in the Senate on April 26, 2001.—(*Honourable Senator Milne*).

**Hon. Lorna Milne** moved the adoption of the third report of the Standing Senate Committee on Legal and Constitutional Affairs on Bill S-25, to amend the act of incorporation of the Conference of Mennonites in Canada.

She said: Honourable senators, since there was an amendment made in committee to the bill, I do have some brief remarks.

This is a straightforward bill that has been requested by the Conference of Mennonites in Canada. It merely brings up-to-date the 1947 act that incorporated the church, changes the name of the church to "Mennonite Church Canada" and allows the church to pursue all its goals, both domestic and international.

• (1600)

Honourable senators will note that one amendment to the bill has been suggested by the committee. The amendment that was requested by the church would reword the opening sections of the 1947 act to more clearly define what the church is, and make other clarifying amendments to the opening sections of the 1947 act.

I am pleased to report there was nothing controversial about anything in the bill or its preamble. I ask that the Senate adopt the unanimous report of the committee.

Debate suspended.

[*Translation*]

## CANADIAN HUMAN RIGHTS COMMISSION

CHIEF COMMISSIONER RECEIVED IN  
COMMITTEE OF THE WHOLE

On the Order:

The Senate put into Committee of the Whole in order to receive the Chief Commissioner of the Canadian Human Rights Commission, Michelle Falardeau-Ramsay, in order to discuss the Commission's work.

The Senate was accordingly adjourned during pleasure and put into Committee of the Whole, the Honourable Rose-Marie Losier-Cool in the Chair.

**The Chairman:** Honourable senators, before beginning, allow me to draw your attention to rule 83, which states:

When the Senate is put into Committee of the Whole every Senator shall sit in the place assigned to that Senator. A Senator who desires to speak shall rise and address the Chair.

Is it your pleasure, honourable senators, to depart from rule 83?

**Hon. Senators:** Agreed.

**Senator Robichaud:** Honourable senators, I move that Michelle Falardeau-Ramsay be invited to sit in the Senate chamber.

**The Chairman:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

**The Chairman:** Ms Falardeau-Ramsay, on behalf of all senators, welcome! Do you have a preliminary statement to make? First, would you introduce your officials?

**Ms Michelle Falardeau-Ramsay, Chief Commissioner of the Canadian Human Rights Commission:** I should like to introduce the two people accompanying me. They are Charles Thérault, Director of the Commission's Executive Secretariat, to my right, and Michel Paré, acting Deputy Secretary General, to my left.

[English]

I am delighted and, indeed, I feel privileged to have the opportunity to talk to members of the Senate of Canada about our work at the Canadian Human Rights Commission. I will keep my comments short so that we can get to the discussion.

As you may know, the Canadian Human Rights Act bestows two key responsibilities upon the commission: one, to protect the rights of Canadians from discrimination based on the eleven prohibited grounds under the act; and, two, to promote respect for human rights to such things as information, education and training, as well as through partnerships in Canada and around the world.

Our third area of responsibility comes under the Employment Equity Act of 1995. The act centres on correcting conditions of disadvantage suffered by four designated groups: women, Aboriginal people, people with disabilities, and visible minorities.

Over the past number of years, the face of human rights complaints has changed. It has become more complex. Increasingly, complaints are argued in court, adding significantly to the time required to resolve them. In an effort to keep pace with these challenges, the commission undertook a comprehensive review and introduced a number of changes to improve both the efficiency and effectiveness of its complaints process. For example, we introduced mediation as a pilot project back in 1998. Because it demonstrated such positive results, we adopted pre-investigation mediation as part of our services. We also noticed oftentimes that the parties involved in a complaint were not respecting time limits for submitting defences and rebuttals. Although this is an issue not within our control, we are nonetheless determined to do our best to enforce reasonable time standards.

In addition, adjustments to the commission's meeting cycle have served to maximize both time- and decision-making requirements. On April 1 we introduced and publicized a series of new service standards. These were aimed at addressing time limit issues within the control of the commission staff, as well as enhancing the transparency of the complaints process. A separate intake unit to initiate the formal complaints process, a comprehensive training plan, and policies and procedures manuals all round out the revamping exercise, which is near completion.

[Translation]

I am pleased to tell you that we have already obtained very positive results. In 2000, for example, the commission closed more files than it had done in any other year since 1997. We also resolved a greater number of complaints in 2000, and reached more decisions than in the four previous years.

As one might realize, resolving individual complaints always requires a great deal of attention. However, as I mentioned earlier, we are seeing a change in the nature and the complexity of cases that come our way. A growing number of complaints bring to light discriminatory policies and practices of employers and suppliers of services: policies and practices that must be challenged.

• (1610)

As well, the Canadian Human Rights Act includes a certain number of provisions that have not yet been mentioned, such as the one authorizing the commission to carry out public inquiries on matters of systemic discrimination.

Even if we believe this to be a logical continuation of the work of the commission, we cannot use this more general approach to put an end to discrimination very readily, because of the increasing constraints upon us to manage our day to day operations within existing resources.

In fact, implementation of this provision is part of the series of recommendations made last year to the Minister of Justice by a committee to examine our legislation, under Justice Gerard La Forest. We are also developing partnerships with other organizations in order to promote human rights while making more efficient use of our resources.

Among the issues relating to human rights in Canada there is of course the right of Canadians to equal pay for equal work. This has received considerable attention in recent years. In February, the commission tabled a special report to Parliament on pay equity.

Its main message to parliamentarians was that the provisions governing this basic human right have led us to a dead end and need to be corrected. I believe, moreover, that the report entitled "Time for Action" is a good summary of our position. The commission is in favour of broad and uniform application of wage parity within a proactive system comprising implementation phases and deadlines for employers to achieve equity.

Instead of the present piecemeal approach, we beg the government to adopt approaches that are uniform and can encourage cooperation between management and unions, reduce or even eliminate the necessity of filing complaints, achieve pay equity far sooner and provide the means of maintaining it.



As I mentioned at the beginning of my speech, our third sphere of responsibilities has to do with the Employment Equity Act. Generally speaking, employers cooperate, and take the necessary action to comply with the legislation, even if they do not always do so as quickly and fully as we would have liked. There is no doubt that the representation of women has improved considerably over the past 13 years. The results achieved in the case of Aboriginal peoples are limited, being better in the public than the private sector. The situation of Canadians with disabilities, however, is far from satisfactory.

On the whole, people with disabilities are the least well represented among the four designated groups. In 1987, the disabled accounted for 1.6 per cent of the workforce in the private sector. In 1999, this figure had climbed to only 2.4 per cent, although their rate of availability stood at 6.5 per cent. The public sector statistics are hardly better.

Under the legislation, the commission has certain powers it can use to tackle problems. Thus, it can force employers to set recruitment objectives in order to increase the number of disabled employees and reach targets within a reasonable time frame.

As for visible minorities, their representation in the federal public service dropped in 2000, having gone from 5.9 per cent in 1999 to 5.5 per cent last year, although their availability rate was over 10 per cent.

Both the public and private sectors have a long way to go to improve the representation of these groups in their ranks. As you know, the government is soon expected to announce a review of the Employment Equity Act, which is in its fourth year. In anticipation of this review, the commission is launching an independent evaluation of its audit program, the results of which it hopes to have later this year.

[English]

Societies around the world are increasingly recognizing that this discrimination and the denial of human rights harms each of us, not just those being discriminated against. It denies any society an enormous amount of human potential. Undoubtedly, this was among Canada's motivations when it signed two fundamental international human rights instruments several years ago. I am referring to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Of the countries that have ratified these instruments, not all nations have incorporated the principles they espouse into domestic law. Canada is not among those countries that have done so. This, coupled with an absence of any independent monitoring of our compliance with international human rights treaties, makes the level of Canada's commitment difficult to measure.

Justice La Forest expressed similar concerns in his report to the Minister of Justice last year. Among his recommendations for change to our legislation, he suggests that, given its

independence from government, the commission would suit the role of monitoring Canada's performance under those instruments. We agree and hope to receive shortly the minister's response to the panel's report.

In the meantime, the work we are doing at the international level with global partners is helping to address the special needs and responsibilities of independent national institutions in the promotion and protection of human rights. For example, we recently collaborated with our partners in the Americas to create a network of national human rights institutions of the Americas. This network will provide a platform for national human rights bodies to identify common interests, share experiences and expertise and help one another help the people we serve. Among other things, it may be used as a catalyst for mobilizing public opinion through the Americas to encourage government accountability for human rights protection and promotion.

I hope my remarks have given a clear, albeit brief, snapshot of our role and mandate, as well as the general health of human rights here at home.

I want to take this opportunity to thank the Senate for providing me the opportunity to discuss these important matters with honourable senators. If there are any questions, I would be more than pleased to answer them.

[Translation]

**The Chairman:** Thank you, Ms Falardeau-Ramsay, for this preliminary presentation.

[English]

• (1620)

**Senator Andreychuk:** I want to commend you and your staff, Ms Falardeau-Ramsay, on the hard work that you do. I know the issues of human rights are limitless, and you have done an admirable job of trying to attack certain issues in a more consistent way than in the past. The fruit of your labour is showing.

I also want to bring to your attention that the Senate has just instituted a Standing Senate Committee on Human Rights, and I look forward as a senator on that committee to working closely with you on issues of human rights. This hopefully will be the first of many opportunities to cooperate.

I have two questions. They are rather broad, which will give you some time to reflect on how you wish to answer them.

The La Forest report pointed to a difficulty, which you have also pointed out in your report, that you must do much investigation, which is very time-consuming; therefore, there is the backlog. You seem to have addressed that backlog through mediation, and I am pleased to see that. In the minds of Canadians — and it is important for them that justice be perceived to be done as well as done — there is still the feeling that the commission investigates and then the commission sits as



a tribunal. Even though you have made an adequate separation, in the minds of people the commission is still not separated sufficiently to give them some level of confidence that they are being dealt with in an unbiased fashion, particularly when they do not win their point of view with the tribunal.

Do you think the time has come that those two roles should be separated more definitively? Perhaps the roles of advocacy, promotion and mediation could be part of your mandate and the tribunal could be a stand-alone tribunal elsewhere. I put that to you as one alternative.

The second question relates to your report and some of your comments about the international aspects of law. Canada signs treaties. It is often perceived that we do not implement them fully in the way we can, and we lose our leadership role in human rights issues.

I was pleased to note that you put in your report that Senator Wilson has led a parliamentary working group on human rights. I wish to point out that Member of Parliament Irwin Cotler has also taken a leadership role in that regard.

Ms Falardeau-Ramsay, how do you think you can strengthen the monitoring of our commitments internationally, as you have put in your report, through a change in the act? The Canadian Human Rights Act needs a clear linkage between international and national responsibilities. Can you give me some insight as to what you think those changes need to be so that we can bring together both the international and the national responsibilities?

**Ms Falardeau-Ramsay:** First, I wish to thank you very much for your kind words toward the commission and the work we do.

As far as your first question is concerned, our role is to investigate complaints and to do promotion and education of the public. When a case comes before the commission following investigation, the commission will decide whether to dismiss the case based on the evidence, send it to formal conciliation or send it to the tribunal stage.

Since 1998, a change in our legislation has made the tribunal as independent as possible from the commission. I say that because we had a decision from the Federal Court recently in the Bell Canada pay equity case, which is now being reviewed. It is one of numerous decisions we have had relating to the Bell Canada decision. The court decided that the tribunal did not appear to be as independent as it should be from the commission for two reasons. The first reason was that the chair of the tribunal was allowed to continue the term of the panel members, whose terms expire while they are hearing a case. The second reason was more directly related to the commission. The guidelines that deal with pay equity under section 11 of our legislation compels not only the commission but also the tribunal, which would mean the tribunal is not completely independent in applying its thinking to the process.

First, we have asked the court to make sure that the process whereby the tribunal chair reappoints or extends the term of a

person for the remainder of a case does not create a bias or a conflict.

Second, we have asked the court of appeal to remove the term "binding." Therefore, the guidelines would exist, but they would no longer be binding. When I met with the Minister of Justice recently, I asked that the act be amended specifically on those two issues.

**Senator Andreychuk:** Have we come to a point where it would be in our interest to have a stand-alone tribunal?

**Ms Falardeau-Ramsay:** There is one.

**Senator Andreychuk:** It would not be within the Human Rights Commission.

**Ms Falardeau-Ramsay:** It is completely separate from the Human Rights Commission because of the *McBain* decision that came out many years ago. At that point, our law was amended and the tribunal is now a completely separate entity from the commission. No link exists whatsoever between the two organizations, and they are two different organizations.

**Senator Andreychuk:** You indicated that you wanted changes in the act to strengthen your ability to blend and monitor international obligations.

**Ms Falardeau-Ramsay:** The reporting is now done through a government department, which gathers information concerning what the provinces have done and puts it together in a report. Therefore, the difference would be that the reporting is done through an independent organization, as in Australia, for example, and other countries.

• (1630)

In those countries, independent human rights agencies report on how Canada has fulfilled its obligation of compliance with the various international instruments that have been ratified by Canada.

**Senator Grafstein:** I will try to be brief in my questions. I will try to do what Senator Andreychuk did and give you my three questions as precisely as I can.

First, what percentage of your commission's time is taken up with the federal Employment Pay Equity Act? We know that you became responsible for employer obligations in 1995. What percentage of the total time of the commission and the tribunal, if you could tell me, is taken up with that aspect of your work, because your mandate is broader than equity?

Second, could you briefly describe how the commission audits its own activities with respect to employment opportunities for women, visible minorities, persons with disabilities and Aboriginal people within your own commission? Who audits the auditor?

Third, I have a twist on Senator Andreychuk's question. Canada has been criticized unfairly that we have not ratified certain international conventions, particularly in connection with human rights. Please specify for us what area of human rights requires remediation by legislation in Canada so that we can address that particular problem as opposed to the general problem of ratification.

**Ms Falardeau-Ramsay:** First, you are right. Pay equity is far from being the only area in which we are active. We are active in the 11 grounds of discrimination that are mentioned in the legislation, plus employment equity, as I mentioned before. However, it is true that it occupies a large portion of our time and our resources.

To give you an example, we have 18 full-time lawyers at the commission. Six of these lawyers work full-time on pay equity cases. In addition, we are contracting outside in the order of approximately \$250,000 a year to deal with pay equity.

It is taking an inordinate amount of our time and resources because not only are our lawyers busy with pay equity, but also, our statisticians and the investigation people are active with pay equity cases. They are asked to appear as witnesses and to help prepare cases. It means, therefore, that for a relatively small amount of complaints, because those complaints represent only 8 per cent of the total amount of complaints that we receive, we spend an inordinate amount of resources, both human and financial.

Concerning who is monitoring the monitors, if I may use that expression, we have asked an independent expert to do the study at the commission. That person is the special adviser on employment equity to the president of Queen's University. Formerly, she was the person in charge of employment equity for the City of Toronto where she established this entire area. I could say that we were pleased to note that we were in fact meeting all the requirements of the legislation, plus having a bit more than full representation for the four designated groups.

The third part of your question dealt with which international instruments have not been adopted within our domestic law.

**Senator Grafstein:** That was not my question. I recognize that Canada has not ratified some international human rights conventions. Lay that aside. What is it within those conventions where Canada is falling below an international standard that might require remuneration? Absent ratification, are there areas within those agreements where Canada is falling below international standards? I think that Canada is getting a bad name when we say that we are not ratifying when I know full well that our standards are higher than many of those countries who ratify and do not fulfil those agreements. When some people are alleging that we are not fulfilling our international obligations, it gives Canada a bad name. Our standards are higher, yet people

criticize us for not ratifying these international human rights conventions.

Within the confines of your concerns, is there an area of human rights, generally known, that comes under those international conventions that we should address to ensure that our standards are appropriate? Is there an area that we are not fulfilling?

**Ms Falardeau-Ramsay:** The first area that comes to mind is that of the social condition. You will remember that last year a bill that originated in the Senate recommended that our legislation be changed to include social condition as one of the grounds of discrimination. This is a ground of discrimination that is mentioned in the Covenant on Economic, Social and Cultural Rights, which Canada has ratified. It is not included in any legislation at the federal level. In fact, Canada has been rapped on the knuckles two times or three times by the UN committee for not having incorporated into its domestic legislation those obligations that they undertook in compliance with that particular international instrument.

**Senator Grafstein:** I have heard that argument before, but when I look at social conditions in Canada and I then compare them to social conditions of those countries that are promoting this agenda, I must say that our social conditions are better than theirs. In effect, it is how you define social conditions. I remember that debate.

Absent a specific example of how we are falling behind an international standard, I think that Canada, in comparative terms, is a world leader in satisfactory social conditions. The UN says that we are best in the world, generally speaking. I reflect on that differently from the commissioner of the commission. You do not want us all to agree with you, do you?

**Ms Falardeau-Ramsay:** What would be the problem of incorporating social conditions in the legislation if we do meet them in our society? It would be a sign that we are taking seriously the obligations that we undertake when we ratify an international instrument. This would be a sign that we commit ourselves and intend to do something when we ratify an international instrument.

I agree with you that our social conditions are probably among the best in the world, if not the best, but it does not mean that they could not be better.

• (1640)

For example, we see people who cannot open bank accounts because they are on welfare and do not have documents to prove who they are. That is the type of thing that could be addressed with the inclusion of social condition. That was also recommended by the report of Mr. Justice La Forest.



[Translation]

**Senator Beaudoin:** My question concerns the commission's international activities. The former justice of the Supreme Court of Canada, Gerard La Forest, produced a report for the committee that reviewed the Canadian Human Rights Act. Recommendations Nos. 26 and 27 are to the effect that the commission should be authorized to reach agreements to cooperate with human rights organizations outside Canada.

If you agree with that proposal, why is it important to connect the Canadian Human Rights Commission with other organizations responsible for these rights? It seems to me that such cooperation is necessary, but what is your opinion on this issue?

**Ms Falardeau-Ramsay:** This year, even though we do not have an official mandate to that effect, we received an amount of \$115,000 from the Treasury Board for international issues.

For the past number of years, we have had agreements with national institutions that protect and promote human rights. Funding for these agreements is provided by CIDA, the United Nations, the United Nations Commission on Human Rights, or the Department of Foreign Affairs. These agreements allow for the establishment of commissions.

We worked in Indonesia. Mr. Théroux, who is next to me, spent three years in that country to set up such commissions. This initiative was a great success, because those who had great credibility were involved in the settlement of the conflict in East Timor. That experience has taught us that we gain a lot more than what we give. We have learned a lot, whether it is on how to manage our own affairs, or on how to deal with deficiencies, racism and ethnic differences.

Those of our employees who take part in such programs gain a lot from them. Exchanges were organized with other commissions. For example, two years ago we organized an exchange with the Australian commission. Two of our employees traded the use of their homes and vehicles with their counterparts, so that the costs involved in this exchange were minimal. This gave them the opportunity to work with another commission for a year.

As for us, we had the good fortune of welcoming a person who dealt with deficiency issues. We gained a lot from the experience.

[English]

**Senator Finestone:** Welcome. It is delightful to see you here. I was delighted with your observation that you are sharing interest and action with another Commonwealth nation. That is a very creative idea, to change houses and facilities.

The Universal Declaration of Civil Rights and the whole question of civil and political rights preoccupies them as well as us.

[Translation]

If it is an international obligation, there are statements to the effect that privacy is a fundamental human right. Do you agree?

[English]

Do you agree that privacy is as much a human right as those rights written into the universal declaration and the declaration on civil and political rights.

**Ms Falardeau-Ramsay:** Yes, but, fortunately, in Canada we have the Office of the Privacy Commissioner to deal with privacy issues. However, you can be sure that we would deal with any discriminatory aspect that would be involved in privacy complaints.

We are ready at all times to cooperate with the Privacy Commissioner on any type of complaint involving human rights. That power is included in our legislation.

**Senator Finestone:** I pose the following question to you: In 1996 and 1997, we saw serious concern on behalf of Canadians regarding the rights of the disabled. Is the question of discrimination based on inherited traits or genetic traits?

According to disabled witnesses we heard across the country, that direction held the potential for terrible discrimination in employment, bank loans, and in rental housing.

The most private issues of a person's life can be detailed in genetic testing. Some test results do not remain private; they become part of insurance files, medical files, legal files, even bank loan and mortgage files.

In that discriminatory portrait which I have just painted, where would a person go to request that fairness be applied in pay levels or to request protection from discrimination based on genetic testing? Would that person go to you? Is the use of my personal DNA information an infringement on my privacy? Is that kind of personal information really at stake in the near future?

**Ms Falardeau-Ramsay:** I see now what you mean. That kind of issue would come directly under our jurisdiction because it would be considered as a perceived disability. A recent decision in the Supreme Court of Canada called *Mercier c. la Ville de Montréal* has helped us. There the court established that a perceived disability is as important as a disability. The court said that genetic testing results could be considered as a perceived disability.

• (1650)

Obviously, things would be much simpler if it were directly mentioned in the legislation. It would cut a couple of cases that would go up to the Supreme Court in order to ensure that this is what the Supreme Court meant. We would, therefore, welcome that type of amendment to the legislation. These will be the human rights in the future, along with other difficult issues such as euthanasia. These will be the issues that the Human Rights Commission will need to deal with in the not too distant future.



Also, it is important that we research in collaboration with other groups in that area to ensure that we will be prepared to deal with that type of case when it occurs. We do not have the resources now to do that.

**Senator Finestone:** From a biological underclass potential, the potential for discrimination exists because there is no legal definition that they have rights. Is that what you are saying, in essence? Where does the lack of clarity rest? Your mandate includes, as you responded to Senator Beaudoin, an interpretation of Canada's responsibilities under the universal declaration and under civil and political rights.

**Ms Falardeau-Ramsay:** Our mandate does not include that interpretation. Our jurisdiction relates strictly to the 11 grounds of discrimination mentioned in the legislation, plus the Employment Equity Act. That is all.

**Senator Finestone:** As regards the 11 grounds of discrimination, is it correct that genetic discrimination is a ground under the pseudonym "handicap?"

**Ms Falardeau-Ramsay:** It falls under the notion of deficiencies. "Disability" is defined as being any type of physical or mental disability. We always encounter cases of perceived disability. The *Mercier* case has clearly established as the law of the land that perceived disability is under our jurisdiction.

The court has gone a bit further in another jurisdiction. It is not really a decision, but rather it is their considered opinion that DNA testing and genetic testing would fall under the term "disability" in our legislation.

**Senator Finestone:** Therefore, the discrimination would fall under your investigation.

**Ms Falardeau-Ramsay:** Yes.

**Senator Finestone:** Does that suffice to start a campaign of understanding and promotion through education and information?

**Ms Falardeau-Ramsay:** We would be pleased to do that, but we do not have enough resources. Most of our resources are aimed at dealing with complaints. We have no control over the complaints, and our funding was drastically cut some years ago. We received a bit more money, but we have a new jurisdiction under the Employment Equity Act that absorbed that amount. Currently, only 2.3 per cent of our budget is slated for promotion and education.

**Senator Finestone:** That is disquieting. It is important that we take this information into account. You were criticized severely for not having fulfilled your mandate under the Canadian Human Rights Act to take a preventive and proactive approach that included education and training. The responsibility rests on the

shoulders of the government for not providing the necessary funds, rather than on you for poor management, which is what I read in the report in some places.

**Ms Falardeau-Ramsay:** We are in a Catch-22 situation. If we put less money toward complaints, we are criticized because the process takes too long and we are not doing our job properly.

I will give honourable senators an example of the cuts we faced. When I came to the commission as deputy chief commissioner, we had about 60 investigators. If I am not mistaken, we now have 26 investigators. That gives you an idea of why we must restrict our activities. To produce the same type of work, we were obliged to put most of our resources on the complaints-handling side of the system and to cut drastically on promotion and education. Even a couple of years ago, following the report from the Auditor General, we almost closed the areas of promotion and education because it was necessary to use the budget to deal with cases.

In that way, we become better at dealing with complaints on time, but then we cannot fulfil the second part of our mandate. If we spend money on information and education, then we must make cuts on the other side. We are in a situation where we will always be criticized.

**Senator Finestone:** You are damned if you do and you are damned if you do not.

Thank you. It is important for us to understand these facts.

**Senator Kinsella:** One of the original purposes of the creation of the Human Rights Commission, and indeed of all the provincial and territorial Human Rights Commissions, was to combat racism in Canada. It seems to me that it is not necessary to attempt to understand or evaluate the malady of racism in Canada that we would have to imagine the burning of crosses in Canada, but rather to simply turn on the computer and go online.

I should like to raise with you, Chief Commissioner, the serious problem of racism on the Internet. Is that problem ever-increasing in alarming proportions? Does your commission have a mandate to combat racism on the Internet? What will your commission do about it? What is the Government of Canada's responsibility?

This is a growing problem. How are we combating racism on the Internet?

**Ms Falardeau-Ramsay:** We have the honour of being the first country in which a complaint was presented to the commission concerning hate propaganda on the Internet — the *Zundel* case. That case is now finished, and we are expecting the decision from the tribunal. There have been many hoops in that case because it has gone to the Federal Court many times. The Federal Court established that we have jurisdiction in this area.

Some weeks ago, we received a complaint concerning hate propaganda on the Internet against gays and lesbians. I am certain that we will receive more and more of that type of complaint.

With expectations, we await the decision of the tribunal. From there we will build some interesting and important jurisprudence on this issue.

• (1700)

**Senator Kinsella:** In addition to the excellent work that the commission does in dealing with matters case-by-case and having human rights jurisprudence established as that proceeds, the enforcement of the act is in response to complaints. It is a complaints-driven system.

Does the Canadian Human Rights Act not include education or development provisions such that the commission can take proactive steps in combating racism in the Internet? For example, could the Government of Canada not use the cutting-edge technology of forced links to the alternative view to the racist view being presented? Could the government assist schools and judicious parents who own their own computer systems by providing a method of screening what is their own property, in such a way that would not interfere with freedom of expression but, rather, control the content of the computer systems that they own? What kinds of creative initiatives such as that can the commission undertake? To what extent is this a shared responsibility with the Department of Industry or with the Department of Canadian Heritage and, in particular, the multi-culturalism secretariat?

**Ms Falardeau-Ramsay:** We would certainly be open to any partnership to deal with these concerns. It would be very important, first, to be in a position to do some research on these issues to determine how to best tackle the problem.

For example, we would be interested in having research done by the Canadian Race Relations Foundation on an issue such as that. That is a completely independent organization, and we could very well deal with them.

As I said to Senator Finestone, it is always a problem of resources. We put out fires. We deal with complaints. We have no choice but to do that first. We would fulfil our mandate in a much better way if we could do that type of work and provide solutions to the existing problems rather than dealing with problems after they have arisen, as in the *Zundel* case.

**Senator Kinsella:** I concur with you. There are software engineers who can create such software to combat racism. I hope you will use your good office to influence the ministry of Canadian Heritage and Industry Canada to do this.

Three times you have raised the issue of your resources. Has your budget been decreasing? Has the government been cutting your budget, or is it increasing it? We know that your responsibilities have been increased.

**Ms Falardeau-Ramsay:** Our base budget is \$15,100,000. We received more money in the last two years, but it was earmarked for pay equity cases. It was, in fact, spent on pay equity cases and employment equity audits.

As far as complaints handling, our budget has not changed, and our budget has not changed for promotions in years. As I explained earlier, we had to put the money there because that is where it was needed. As I said in my presentation, we have increased as much as possible the efficiency and efficacy of the complaint process. We have tried to ensure that, where possible, cases are settled through mediation at the beginning to do away with the need for investigation.

**Senator Kinsella:** It is to be hoped that your appearance before this honourable house today and in the future will allow the Senate to recommend to the government that, if Canada is to assume a leadership role in these cutting-edge areas of human rights, genetics and the Internet, in which there is tremendous opportunity for contribution by Canada, you will need more resources.

[Translation]

**Senator Pépin:** I welcome you to the Senate. I remember the campaigns we both ran in various areas, including the status of women. This leads me to talk to you about pay equity. You say that there was mediation at the beginning and that, now, you would like the concept of pay equity to be broader, more uniform and to be achieved more quickly. What would you recommend in this regard so the process would occur more quickly? Obviously, setting your budget problems aside.

**Ms Falardeau-Ramsay:** In the system as it stands, pay equity depends on the complaints we receive. As soon as you speak of complaints, you are speaking of potential litigation and time frames. You are talking as well about cases such as, for example, the famous case of the *Treasury Board Secretariat v. the Public Service Alliance of Canada* or of the case of *Bell Canada v. Communications, Energy and Paperworkers Union of Canada*, which, in fact, began in the late 1980s, therefore some 15 years before a solution was reached. That shows the system does not work.

The percentage of our resources that goes to pay equity is also incredible! These are not just our own resources, but those of organizations involved in these cases, as well.



We need a much more proactive system, one like the system used in employment equity, that is, a system in which obligations are imposed generally on all employers. They would therefore be imposed not just on employers against whom a complaint has been lodged, but on all employers, something that is not currently the case. At the moment, only those employers about whom a complaint has been made are subject to these obligations. If we had such a system, this alone would be something.

The system would also make it possible to take into account certain elements that are not considered at the moment. For the moment, it is possible there might be an implementation period that depends on the economic situation of the country in general. Instead of implementing pay equity immediately, it might be done over a period of six months or a year. What counts is that it be done quickly. The more quickly it is done, the less costly it will be. We would not have to pay interest on the amounts involved in the complaint, which can go back as much as 15 years. There is no doubt it would end up costing less.

The Minister of Labour has announced that a study would be carried out on pay equity. It is important not to lose sight of the fact that pay equity is not a matter of labour law but of human rights, discrimination, respect and dignity. It is not something to be negotiated as part of a collective agreement. Wage levels can be negotiated only after pay equity has been established.

Minimum wage is not negotiable, because it is the base. The same thing applies to pay equity. Pay equity is a base, and then there can be negotiation from there. It is very important not to lose sight of this, particularly when amendments to the statute are looked at by the Senate.

The definitions of pay equity should be far clearer and the standards far more precise. To give you some idea, the term "establishment" set off three years of dispute before the courts. If a word like that leads to three years of dispute, the methods to be established in order to ensure pay equity can involve the experts in years and years of wrangling. It would therefore be important for specific standards to be specified in the legislation.

**Senator Pépin:** The law needs to be very clear and proactive, in order to make your work easier.

**Ms Falardeau-Ramsay:** Absolutely.

**Senator Pépin:** You were saying just now that there were certain difficulties relating to budget and staff cuts. Are you nevertheless satisfied with the work of the commission as far as the promotion of human rights is concerned? Do you think you are able to do more in this area? Despite all the current difficulties, are there some areas you think you need to get involved in?

**Ms Falardeau-Ramsay:** We should definitely be doing more. We all know that information and education are the foundation of communication: the more we can inform and educate people, the better we will be able to prevent complaints to the commission.

I find it most unfortunate that we are in such a situation. Not only can we not inform and educate — which would be essential — we also cannot explore what the key areas of discrimination in coming years will be.

Not being able to prepare is, for me personally, very frustrating. On the one hand, you want to be able to carry out the role you have been trained for and, on the other hand, you are in a situation where this is impossible, because you are always having to put out fires.

**Senator Pépin:** I know that your difficulties are closely tied to finances. If you had the necessary funds, do you think you could move toward education and information?

**Ms Falardeau-Ramsay:** The first thing to promote would be training and education in connection with the existing law. We are already trying to do so, as much as we can with the resources we have, and often it has to be done through partnerships or with other organizations.

Last year, we worked in partnership with the Senate and NGOs in the context of a fair and a banquet to celebrate the contribution of persons with deficiencies in the workforce. We are very happy to make this sort of contribution when we can.

Recently, a video was produced in partnership with the Canadian Race Relations Foundation. In this project, we translated the texts. That is about all we could allow ourselves to do. This was not a huge task.

In such a situation, you follow everything that is going on, but you cannot initiate projects. So it is not your agenda that counts. What counts is that you try to take part in everything you can get involved in to do whatever you can in the field. Your priorities are not really put forward.

**Senator Pépin:** You have the leadership, but you lack the means.

[English]

**Senator Cohen:** Thank you, Madam Commissioner, for reminding the Senate of the social condition bill. As the person who tabled that bill, I would say, on the record, that that day was a very proud moment for the Senate. It was very gratifying to the Senate when the review panel actually validated the importance of that bill by outlining the need for social condition to be added to the prohibited grounds for discrimination.

In response to a question I raised in February, the government indicated that it needed more time to carefully review the report and consult with other federal departments.



In your opinion, can we expect the inclusion of social condition in the act soon, or will it just not go anywhere? Will we have to continue rapping Canada's knuckles, as you said before? Have you or your commission been contacted by the Department of Justice regarding the drafting of any legislation in this realm of social condition? To what extent has your department been able to use any of the new legislation or to implement some of the legislation under your present mandate?

**Ms Falardeau-Ramsay:** No, we have not been contacted by the Department of Justice on any of these issues. My guess is as good as yours on that. We do not know about the inclusion of social condition. In fact, when I met with the Minister of Justice approximately a month and a half ago, I asked when we could expect to get the report. The minister told me that they were still in consultation with government departments. I have no more inside knowledge than you do, so I have no idea.

It is very clear, and you mentioned the La Forest report, that social condition should be part of the legislation.

As far as implementing some of the tools we already have in the act but cannot use, we find we are in the same situation as we are with information and promotion, that is, we do not have the money. For example, Mr. Justice La Forest recommended that we should exercise our power of holding public inquiries into certain areas because it is not only a means of changing some issues, it is also a means of educating the public. However, it takes money to do that.

• (1720)

We do a significant amount of consultation on some of our policies. We started to do that through the Internet. Obviously, that does not have the same impact as conducting an inquiry on a specific subject matter. As you know, the type of discrimination that we are dealing with is much more systemic discrimination than it was in the past. It is against more than the individual. An inquiry into some areas would be the best way to deal with that.

For the same reasons — and I am sorry to return to the same refrain — we do not have the money for this. We must deal with what is most pressing.

[Translation]

**Senator Joyal:** My first question relates to a reference that you made in your presentation to the 11 grounds of discrimination mentioned in section 3 of the act. These grounds are very specific. They include discrimination based on race, sex, religion, disability, et cetera.

Under a reform of the act, would it not be a good thing to have some sort of equality or protection right under the law that would be similar to section 15 of the Charter? The commission's mandate would then be much broader than merely covering those 11 grounds.

We all know that when a ground is mentioned, it is by definition restrictive. As some senators have pointed out, in the

years to come — given the social, economic and scientific evolution — all sorts of circumstances will emerge and will, in some way, pose a challenge to the commission's mandate.

Should the inclusion of an equality or equal benefit right not be the fundamental amendment to make to the act? Could this be the best way to deal with the new scope of these rights?

**Ms Falardeau-Ramsay:** I would say that it is better to include this type of clause in an act than to have to amend the act every time. Take, for example, sexual orientation, which was the object of the most recent amendment. How many years did it take to amend the act to include this ground of discrimination? The Supreme Court had to hand down rulings before the act was amended. It is always a very long process.

You are absolutely right when you say that our society is not static, that it is constantly evolving. Therefore, the grounds of discrimination also change and we cannot, with specific but restrictive grounds, take into account that evolution in society.

**Senator Joyal:** In the meeting that you had with the Minister of Justice and to which you referred, did you discuss the redefinition of the scope of the act?

**Ms Falardeau-Ramsay:** We have yet to get an answer on what the Minister of Justice intends to do following the recommendations made in that report.

**Senator Joyal:** As regards the creation of a Standing Senate Committee on Human Rights, it seems to me that this is a major development in human rights promotion, education and, of course, respect. How do you hope to coordinate the efforts of the commission and that of the soon-to-be-created Senate committee?

**Ms Falardeau-Ramsay:** As far as I am concerned, this is excellent news. If the Senate creates a Standing Committee on Human Rights, you can rest assured that the commission is prepared to cooperate as much as possible with the work the committee does. This would be an excellent way for us to promote the commission's priorities and, at the same time, do promotion and education.

**Senator Joyal:** Would you go so far as to say that, in the amendments to be made to the Canadian Human Rights Act or in any future overhaul, a provision confirming the need to create a parliamentary committee on human rights would be desirable, as provided for in section 38 of the Official Languages Act, which specifically mentions the importance of a parliamentary committee to give effect to the commitments of the Government of Canada with respect to human rights?

**Ms Falardeau-Ramsay:** I would be in favour of such a provision. You are certainly aware that we are the poor relations when it comes to parliamentary committees. At present, there is a parliamentary committee to look at justice and human rights. But human rights often take a bit of a back seat to the often more visible legal issues.

There is also a parliamentary subcommittee on disabled persons, part of whose discussions are devoted to human rights. I am not saying that this is not an important part, but it is just a part.

I think that the provision you mentioned would be an excellent amendment. Just as for official languages, we are an agency of Parliament. I therefore think it would be natural for there to be a parliamentary committee that deals more specifically with human rights.

**Senator Joyal:** Would you be prepared to play a role equivalent to that played by the Auditor General of Canada on the Public Accounts Committee, that is, to be permanently available to the committee and to use your resources to help the committee so that, when it has decided on its agenda, it will be able to meet the objectives we would be obliged to meet under the legislation in the context of a redefined system?

**Ms Falardeau-Ramsay:** In the context of a redefined system, the only limit is our imagination and, of course, government resources.

If it were possible to create a similar system, Canadians would stand to gain.

• (1730)

**Senator Joyal:** My last question is on the importance of international instruments signed by Canada and not yet ratified.

Last week, thanks to an initiative by the committee co-chaired by the MP for Mount Royal and Senator Wilson, a professor from McGill University spoke to us of the importance of international instruments and their impact on Canadian law. And one of the recommendations in Mr. Justice La Forest's report was as follows:

We recommend that the Act have a preamble referring to the various international agreements that Canada has entered into that refer to equality and discrimination.

This strikes me as an extremely important recommendation that can, to some extent, compensate for the lack of ratification of certain international instruments due to the fact that jurisdiction over law is split between the provinces and the Canadian government.

It strikes me as very important that there not be any dissociation of Canada's obligations on the international level from the way they are assumed on the domestic level. In the decision in *Burns and Rafay*, which the Supreme Court brought down this past February, it recognized the mandatory force of these instruments, even if in practice they have not been integrated into Canada domestic law.

In other words, Canada cannot preach internationally that certain values and principles must be respected in connection with human rights, while acting in another way within its national boundaries.

How do you see the possibility of the Canadian legislator achieving this stage — one I feel is extremely important — so as to recognize within the Canadian Human Rights Act the importance of international instruments?

**Ms Falardeau-Ramsay:** I share your belief that it is extremely important — at least in the preamble to a law — to include a reference to international instruments that are the source of our legislation. Ours came into effect in 1977 following on the obligations assumed by Canada as a result of the ratification of international instruments.

It is very important to link these international instruments to a clause that is not restrictive. This would allow it to evolve as our society evolves, and to put in place the means of ensuring that Canadians live in conformity to it and enjoy the rights and obligations the government has assumed on their behalf by ratifying these international instruments.

I was extremely pleased to see such a recommendation in Mr. Justice La Forest's report. I hope that the government will act on it.

[English]

**Senator Wilson:** I should like to say how pleased I am that you are here, Commissioner. I am equally pleased that the committee reviewing the Canadian Human Rights Commission has recommended that the commission be charged with monitoring Canada's performance under international covenants and treaties. At the present time, no Canadian agency is charged with that responsibility. There is a high interest in human rights in Canada, but we have not yet developed the public instruments. I lay awake at night wondering if they do not give it to you, to whom will they give it and will they give it to anyone? You might want to respond in terms of what you think legislators can do if that should happen, that is, if no Canadian agency is charged with the job of monitoring.

Two years ago, practically to the day, Canada reported our performance to the UN committee charged with overseeing civil and political rights. They brought back some concluding observations to the UN which, in my view, are not so that we can prepare ourselves for Bangladesh so we look good but, rather, that we raise the benchmark for Canadians in terms of human rights. The representatives of the Canadian government who went to that meeting were commended by the UN for doing this. However, they promised a press release, the formation of a parliamentary committee to monitor progress, and distribution of concluding observations to all parliamentarians, none of which happened.



I made three phone calls to Heritage Canada to determine if they would do anything. Each time I was told that it was not the appropriate time, which I take to mean that they were not about to do anything.

What confidence might we place in the commission to do the critical job of monitoring? Where does it fall in your priorities? Of all the things that need to be done, provided you receive the resources, what priority would you place on monitoring and communicating, let alone looking at the cutting edge of things? We have not even caught up with the things that are pretty pedestrian, about which most Canadians do not know.

The second issue is that of resources. It is incumbent upon us to pay attention so that if the government hands you the job of monitoring, parliamentarians can ensure that you have the extra resources to do the job.

**Ms Falardeau-Ramsay:** First, I do not know of any institutions, agencies or departments that monitor. As you know, there is a reporting function. However, that is not the same thing as monitoring. I do not think there is any real monitoring at this time.

Obviously, that would be a very high priority for the commission. I say that because it is on that basis that Canada would be given a rating, if you will, as a country that recognizes, commits itself and abides by the obligations that it has undertaken in ratifying various international instruments.

Clearly, if we had the resources to do it and to do it properly, it would be very high on our list of priorities. It is like the bedrock on which we build.

**Senator Wilson:** In support of Senator Joyal's comments, I think a small but critical mass of parliamentarians would like to share some responsibility with the commission in that area.

**Ms Falardeau-Ramsay:** That is good.

**Senator Stratton:** Notwithstanding burning crosses, do you believe that racism is alive and well in Canada?

**Ms Falardeau-Ramsay:** Unfortunately, yes. A large number of complaints are based on race and ethnic origin. At the moment, if I am not mistaken, some 35 per cent of our cases are based on race, colour, and national or ethnic origin.

• (1740)

Very often, those cases are subtle, but they are, nonetheless, still based on those grounds. I am pleased to say that we no longer have those obvious cases where people would say, "It is because you are Black that you cannot do the job." In a way, however, it is worse now in that it is almost like painting an impressionist painting. You need all kinds of small bits and pieces of evidence so that you can draw the portrait of what is happening. Approximately 10 years ago a case in front of the tribunal would last three days, whereas today it lasts 10 days. As

a result of the way racism is practised, people are often not even aware that they are victims of discrimination in certain insidious ways. For example, in the NCAR cases we heard statements such as, "Well, you know, it is not a Canadian management style," or "These universities are good, but they are good for the continent." There were all kinds of innuendoes of this type. The kind of evidence you need to prepare a case takes much more time to find. That is the type of discrimination that is faced by people today.

However, occasionally much more direct types of discrimination are found at the provincial level when dealing with housing and those types of issues. We do not deal with those issues.

**Senator Stratton:** In your opinion, is it getting worse or is it getting better?

**Ms Falardeau-Ramsay:** That is a difficult question to answer. The number of cases we have had has been the same for a long time. That could be interpreted to mean that there are fewer cases because the population is larger. People are certainly more aware of their rights. It is difficult to say whether it is getting worse or better. I do not know the answer to that question.

**Senator Stratton:** I believe social conditions are virtually at the top of the agenda. We have people living in northern, isolated communities where young women, men and children virtually do not have a future because of the social condition. That is the worst form of racism, and I do not know how we can hold our heads up high in any international forum because that condition exists in this country.

Would it behove you as the chair of the human rights commission to make that a top priority, whereby you would travel the country, communicate, raise the issue and continue to raise the issue? This problem is not going away. It seems to be getting worse. I come from a province where, in my view, it is getting worse.

I would like to see you out there virtually hitting politicians between the eyes to get their attention and to encourage them to deal with these issues more dramatically than they have been dealing with them. We are losing generation after generation. It is consistent.

**Ms Falardeau-Ramsay:** I agree with you. This is an issue that I raise wherever I go. Whenever I make a speech I try to include that topic. It is unconscionable that in a country like Canada we would have situations like that.

A couple of years ago we issued a report that was based on the situation of the Innu in Labrador. We will prepare a sequel to that because we want to know the situation today. Without trying to foresee the conclusion of the investigator, I would be surprised to learn that the situation is better now. As you say, it is important that we all push the issue that social conditions should be included in the Canadian Human Rights Act.



**Senator Milne:** Ms Falardeau-Ramsay, I was charged by Senator Pearson with asking you a question when you came today. Most of her concerns have been answered. You have covered the issues of how your increase in the budget has been eaten up by the increasing equity issues that you are facing and have been charged with. We have covered social condition, and we have covered hate on the Internet. We are coming down to the fact that your budget needs to be increased.

I read that you spend 2.7 per cent of your budget on promotion and education, which is a major part of your mandate. By my calculation, that adds up to approximately \$400,000. That is all. You are not able to get the word out where it needs to go. You need more money. In addition to that, are there some changes in the structure of the commission itself, or in the legislation, that might help you in your approach to your entire mandate?

**Ms Falardeau-Ramsay:** Our act is now 20 years old. After 20 years, a statute that deals with social issues, such as the Canadian Human Rights Act, must require to be changed in one way or another. That is why we hope that there will be an answer to the report that was presented by the panel headed by Chief Justice La Forest. Our act could then be revamped so that the objectives that were set for the Canadian Human Rights Commission and the Canadian Human Rights Act can be better met by these changes.

**Senator Milne:** Are you telling me that everything you would like to see done is included in Chief Justice La Forest's report?

**Ms Falardeau-Ramsay:** Not necessarily. If the recommendations from Chief Justice La Forest's report are only put into practice in part, then it is almost of no use because we need to paint the entire picture. I would have no problem in sending all complainants directly to the tribunal, as long as they are well represented, otherwise, you have an imbalance of power. As an individual, you would be up against big organizations because most private enterprise under federal jurisdiction involves big organizations, with legal units of six or seven lawyers who will be in court to represent them. As well, we know that there are many legal units in various departments of the government.

• (1750)

You may have an unrepresented complainant. That would be dangerous. The federal government would need to establish and fund legal clinics specifically to do that. More education, promotion and research policy should be done to lower the number of complaints. If the number of complaints does not go down, you re-establish a backlog problem at the tribunal level instead of the commission.

That situation will need to be closely looked at as a whole when the response from the minister comes to Parliament. We must ensure that the system is viable and protects the individual. If systemic issues are important, and I agree that they are, individuals will always have a place to complain about the discrimination they feel. The only condition I would put on this issue is that we take it as a whole and not piecemeal.

**Senator Milne:** You would also seek more money.

**Ms Falardeau-Ramsay:** This system would cost a lot of money.

**Senator Chalifoux:** I have three concerns. First, my office did a small study on employment opportunities for Aboriginal people within the Public Service Commission and within the government and found that discrimination was running rampant. I should like to know what power you have in addressing that issue.

Second, if you are Aboriginal or live in a remote community, it is a fallacy that Canada is the best place in the world in which to live. The Third World conditions in this country are absolutely deplorable. I supported Senator Cohen's statements when she brought forward the concept of social condition. What is your position and what is happening in that regard?

Third, Aboriginal women, Aboriginal women prisoners, Aboriginal women in the military service and Aboriginal women with Bill C-31 status have no rights. When I got a call from the women prisoners in the Prince Albert penitentiary, they were afraid to say anything because of possible repercussions from their guards. I want to know how that issue can be addressed. Does the Indian Act still supersede the Human Rights Act?

**Ms Falardeau-Ramsay:** First, concerning the situation of the employment of Aboriginal people in government services, I agree with you. If we remove from the equation the Aboriginal people employed at Indian and Northern Affairs Canada, the situation is quite dismal. It is somewhat better than it was, but not very good. Through our audits under the Employment Equity Act, we hope to improve the situation. At present, we are auditing 35 government departments, if I remember correctly, which encompasses about 81 per cent of the employees. It is not always easy. Very often we must return a second time because even though employers, including the federal government, were given one year to prepare for an audit, in most cases nothing has been done. The 180 audits that we are involved with represent the equivalent of 291 in that we must go back because the work has not been done. Through employment equity, we hope to be able to do something. As I said in my presentation, we are in the process of looking at the results under the Employment Equity Act so that when the act is reviewed, we can make representations as to what can be improved there.

As far as the concept of social condition is concerned, I completely agree with you. I have visited some of the areas you mentioned. It is very important to improve the situation. I have been in Third World countries, and I can assure you that they have nothing to envy when you go to some reserves or look at the way some Aboriginal people live in urban areas. That something like this could happen in a country like Canada is almost unbelievable.

As to the third issue you raised concerning Aboriginal women, specifically Aboriginal women in jail, about two and a half years ago I visited women's penitentiaries in Canada because I wanted to know what was happening. Obviously, there are many problems. Those problems are such that a month and a half ago we received a complaint from the Elizabeth Fry Society about the situation of women, particularly Aboriginal women, in federal penitentiaries in Canada.

We will be dealing with that situation. We are looking at how we can investigate the issue because it is a difficult one to investigate. We want to investigate it so that we gather the most evidence possible. This point is very important.

As to your last point, section 67 of our legislation is still in effect, which means we cannot touch what is done under the Indian Act or any of its regulations. We deal with issues that are outside the Indian Act, but nothing that falls directly under the Indian Act. That is very sad.

**Senator Graham:** You have made a very interesting presentation and raised some compelling observations. Senator Milne referred to the percentage of your base budget of \$15 million that is spent on education.

**Senator Milne:** Four hundred thousand dollars.

**Senator Graham:** You said 2.7 per cent.

**Ms Falardeau-Ramsay:** It is 2.7 per cent.

**Senator Graham:** How much of that amount is spent in the schools of our country?

**Ms Falardeau-Ramsay:** That is an interesting question. When we deal with schools, we do so through the provincial commissions. Education is under provincial jurisdiction, and we must be careful in the way we approach that type of education.

• (1800)

When I visit the various regions of Canada, I usually do it in conjunction with my provincial counterpart. We contact school boards, for example, to explain what is available for children on our Web site, and that type of thing. It is very difficult to pinpoint an amount that is spent on children in school.

[Translation]

**Senator Robichaud:** I move that the Chair of the Committee of the Whole now report progress and ask for leave to sit again.

**The Chairman:** Is that agreed, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Honourable senators, the sitting of the Senate is resumed.

#### REPORT OF THE COMMITTEE OF THE WHOLE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, the Committee of the Whole, to which was referred the review of the work done by the Canadian Human Rights Commission, reported progress and asked for leave to sit again.

**The Hon. the Speaker:** When shall the committee be allowed to sit again?

**Senator Robichaud:** I move that the committee be allowed to sit again later this day.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

#### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, it is now 6:00 p.m. and I move that we do not look at the clock.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

#### COMMITTEES AUTHORIZED TO MEET DURING SITTING OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That all Senate committees sitting today have the power to sit during the sitting of the Senate, and that rule 95(4) be suspended in relation thereto.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to.

[Ms Falardeau-Ramsay]



## THE CANADIAN HUMAN RIGHTS COMMISSION

CHIEF COMMISSIONER RECEIVED IN COMMITTEE  
OF THE WHOLE

On the Order:

The Senate resolved itself into Committee of the Whole to receive the Commissioner of the Canadian Human Rights Commission, Ms. Michelle Falardeau-Ramsay, with a view to discussing the work of the Commission.

[English]

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on the question, the Honourable Rose-Marie Losier-Cool in the Chair.

**The Chairman:** I believe that Senator Graham was asking a question.

**Senator Graham:** As I was about to say, if racism is indeed rampant and discrimination evident in many areas of our society, it seems that one of the better places where you might spend part of your budget would be in education in our school systems and in our universities.

If your base budget is \$15 million plus, and if you were given an increase in your budget, what would your priority be for the increased money? Would one of your priorities be in education?

**Ms Falardeau-Ramsay:** Of necessity, it would be used for promoting education. This is where we are failing.

You speak of universities. Last year, our priority in information and education was employers because 64 per cent of our complaints are employment related. That means that we should be preaching more to employers. Preaching to the converted is not really the best thing.

I went around Canada speaking mostly to business students and law students at universities. They will probably be the employers of tomorrow. If we had enough resources, we could build on that type of education. We could, for example, develop modules of human rights that could be loaned to provincial commissions. The federal and provincial commissions could deliver information simultaneously at the school level and at the university level. There is a real need at this regard.

**Senator Graham:** I am sure that you would find much encouragement and support from the Senate with respect to providing further resources for education in our schools and in our universities. I commend you for your work.

I am pleased that the Senate has seen fit to establish the Standing Senate Committee on Human Rights. I hope that you, as chief commissioner, and your staff will work in close collaboration with the Senate committee in the future. We look forward to having you here again soon.

**Ms Falardeau-Ramsay:** Thank you very much. You can count on our cooperation and collaboration 100 per cent.

**Senator Watt:** First, I would like to recognize that you are an Inukshuk. I believe that that stands well in the Arctic.

I will mainly cover issues related to the Arctic and the Subarctic. The Subarctic refers to northern Quebec and northern Labrador.

The Constitution should apply to every human being. I believe that the right to life also applies to Aboriginal people in this country. This is where I will be coming from when I point out certain deficiencies and inconsistencies in our dealings as Aboriginals with our thousand partners.

At times, you wonder whether this is all related to discrimination, and at times you try to come to grips with yourself such is not the case.

• (1810)

When you are living in the Arctic, you live so far away from so-called civilization that the two lifestyles are not even comparable. That reality is not always recognized by the authorities. I would say that attitude is pretty consistent throughout.

I have participated in the study of various bills. At times, those bills have not taken proper consideration, as some senators have already stressed, of the social factors and the economic factors of the people.

As you know, Commissioner, we are trying our best as a people who live in the Arctic to cope with the massive changes coming from the South to the North, changes that often hinder our normal way of life. Many of our people cannot cope; they are falling through the cracks. There are many suicides amongst the young people. Many of our young people, and even our elderly people, are alcoholics and drug addicts.

At times, we wonder how we can possibly deal with all the problems. I have listened to the debate here; I have listened to the answers you have provided and I feel a sense of hope. We need hope if we are to fulfil our right to life under the Constitution.

We have signed deals with the Crown from time to time. As the Inuit of Nunavik, we were the first to sign a modern-day treaty agreement. Up to now, our Government of Canada, rightly or wrongly, whether they realize it or not, is not living up to the treaty which was signed. Time and again, I get the feeling that the Department of Justice is trying to find some way of undoing what they have already done. What do you call that? Is that discrimination, or is that a simple lack of realization of the sensitivity of those matters? I would rather put it under the latter category. Maybe the government representatives just do not understand or realize how different our lifestyle is.



I do not know if my question can be answered here today, Commissioner. I hope one day it can be. I wish to return to a system of checks and balances between the North and the South. Until the day the people who live in the Arctic are given enabling legislation; until they have the authority to protect and to improve their own lives; until they have the authority to influence Canadian government legislation from time to time, as need be; until they can force the government to address our critical issues, then our problems will not be resolved.

As Commissioner, you are an instrument for sensitizing our country's government and the general public, especially those who live in the South, although, perhaps, those who live in the North must also become more sensitive. You can help to narrow the gap so that there will be a peace and understanding between the two races. We will not disappear, and those who live in the South will not disappear. Therefore, we must find a solution. Will you agree that one day an instrument must be found to deal with that precise problem?

**Ms Falardeau-Ramsay:** I do think so. It is interesting, because you are repeating the words of our former chief justice in one of his decisions when he said that we are here to stay, together, and so we had better find a way to live together.

I completely agree with you. That is what we should do. The commission is trying, mostly through its annual report, to foster the idea that there should be a way of ensuring that we can live together, in the North and in the South, in ways that are respectful of the dignity of human beings. If I did not have hope that something like that could happen, I would not be here today. I think it is very important.

I try to go to the North every year. I cannot go everywhere in one year, but I do try to go to Nunavut one year, to Nunavik another year, as well as to the Northwest Territories and the Yukon. I want to directly experience what is happening. I firmly believe that, if one stays in Ottawa in one's corner office, one cannot have a true idea of what is happening in the country. One must see it for oneself and meet the people. That is the only way. If more people would do that, the links between the South and the North would be improved.

**Senator Watt:** I have a suggestion you may wish to consider. The Inuit of Nunavik are the highest taxpayers in this country. We have a very high costs of living, including a high cost of transportation. I understand that Ottawa will again be slashing the subsidy for telecommunications. If that is the case, that means we will again be paying more.

To give you an example, when I am at home, my \$1 is worth only 50 cents in purchasing power. We pay taxes upon taxes for transportation and things of that nature. This is becoming a critical issue affecting the very survival of the people, let alone touches their social problems. Economically, we are just barely making it. In fact, some people are not making it. Luckily, the

Inuit still uphold their tradition of sharing with neighbours. They share with their fellow Inuit. Without that, our people would be dying left and right.

I do not know whether that comes under your responsibility but this is a critical issue which must be addressed immediately.

**Ms Falardeau-Ramsay:** I am also not sure if it would fall under our jurisdiction, but we could ask our staff to review the issue and see if we can do something. Perhaps we cannot, cannot promise.

**Senator Watt:** I am prepared to make myself available to you resource people to provide some information, and to see if anything can be done.

[Translation]

**Senator Prud'homme:** Ms Falardeau-Ramsay, I am very pleased to see you again. We took law together at university. I must say there were few brilliant women. There was you and Madam Chief Justice Lise Lemieux, who is currently under attack.

[English]

This means trouble for them. Her attackers are underestimating Madam la juge en chef du Québec. She can handle any attack from members of the other chamber. Having said that, I am honoured, therefore, to be able to meet with you.

[Translation]

You have made three points very well. First, changes such as we are seeing today are happy initiatives arising increasingly from the Senate. I would like to see such initiatives established in the House of Commons, because this is a lot more responsible than debates where people shout at each other. God knows I know whereof I speak, having been an MP for 30 years. I am not trying to teach the House of Commons a lesson, but I think these exchanges are much more healthy.

I consider Canada a human experience. There is no doubt this country is in constant flux, and this is why the questions you raised troubled me. When you are asked if, in your opinion, there is no more racism today than there was in our day, I imagine it is difficult to answer such a question.

• (1820)

In our day, Canada was very different. The more Canada opens up, the more different it will be and the more difficult it will be for people to adapt to the changes. Obviously, you need a certain amount of money for education, for making people more open-minded and preparing them for the changes. There has to be concrete action taken.

I hope no one will take offence. Sometimes, an example must be set. I will tell you about the Senate. If there is one place where there should be no discrimination, it is certainly in Senate appointments. We have another option. I have always said that the Senate should be representative of the total equality between men and women. I must say that much has been accomplished in this area.

I recall when I was an MP that there were only two female senators and one female MP. I am sending you the message that perhaps this is an area that should be looked into. I wonder whether the Senate should not be setting an example. There will soon be 15 vacant seats in the Senate. There are 12 right now, and we are going to lose three of our colleagues shortly — they will be taking mandatory retirement. That will leave 31 female senators. Some will say that this is amazing. Yes, but there could be more. I believe in complete equality, and the Senate can set an example.

It was only quite recently that a second woman joined the Banking, Trade and Commerce Committee, which has 13 members. A man has just joined the Social Affairs, Science and Technology Committee, which was previously composed of ten women and two men. Perhaps we need to search our souls. We need to look at ourselves. I would not want to insult anyone but thank God there are women working in the Senate! I amused myself noting that 60.5 per cent of the senators listening to your every word were women. Let nobody tell me that women are not capable of handling public administration and other equally important issues.

It is worrying to hear that there are racists in Canada. People are going to repeat this around the world. We are a human experiment in a country in complete upheaval. This is coming from everywhere. We have prepared neither hearts nor spirits for the rapid changes in our cities. We should probably become your advocates for more funding. I think that your commission is the best, not because we know each other or are friends. Men and women in politics are not necessarily the best people for this.

**Ms Falardeau-Ramsay:** It is always a pleasure to see you again. I agree with you completely. Considerable education and training are needed if people are to deal with changes, which are always very difficult to accept. People are always afraid of the unknown. People need information if they are not to be afraid.

• (1820)

[English]

**Senator Poy:** Commissioner, thank you for appearing before our committee today. I do not understand how complaints are made to the Human Rights Commission.

I will speak about the experiences of some of my constituents in Ontario. I understood that there was only one commission, and then I realized that there are many different commissions and that

Ontario has its own commission. What kind of control or authority do you have over the provincial commissions?

**Ms Falardeau-Ramsay:** We have no authority at all over the provincial commissions. We are completely independent within our own sphere of jurisdiction. However, we cooperate with the other commissions. For example, people often call the Canadian Human Rights Commission first, which often happens because "Canadian" comes before "Ontario" in the phone book, and we realize that the issue is for the provincial jurisdiction. We will send them directly to the Ontario Human Rights Commission so that no time is wasted.

However, issues are often more complicated than that and need to be studied to determine whether they fall under provincial or federal jurisdiction. Often it takes time. We ask our lawyers to review the case and to provide an opinion as to the appropriate jurisdiction. If it is decided that the matter does not fall under federal jurisdiction, we send the case to the provincial body.

We can be reached quite easily by phone; we have 800 numbers and we can be called collect. It does not cost to call us. We can also be reached by mail, by e-mail or by visiting our offices. We have six regional offices across the country. However, our country is so large that someone who lives in Saskatoon would be required to travel to the Winnipeg office.

**Senator Poy:** Did you say that your authority does not supersede the provincial commissions?

**Ms Falardeau-Ramsay:** That is correct.

**Senator Poy:** The commissions are actually separate.

**Ms Falardeau-Ramsay:** Yes.

**Senator Poy:** What falls under your jurisdiction?

**Ms Falardeau-Ramsay:** Everything that is employment-related and service-related falls under federal jurisdiction. That means, by and large, the federal government and its various agencies and Crown corporations, as well as everything that relates to banking and to transportation between two provinces or internationally. For example, OC Transpo falls under our jurisdiction because it is between Quebec and Ontario. As well, the airlines, the long-distance bus companies, the trucking companies and everything that deals with communications — television and radio — fall under our jurisdiction. Other examples relate to areas that have been declared of indigenous interest to Canada, from wheat, to harbours, to airports, to atomic energy, et cetera. By and large, these subject areas fall under our jurisdiction.

• (1830)

**Senator Poy:** You mentioned the importance of education, and I agree with you. How closely do you work with the race relations foundation?



**Ms Falardeau-Ramsay:** As closely as we can. We have regular meetings in which we try to see how we can get our forces together in order to do something. We had a project last year dealing with racism, the end result of which will be a video to be distributed in schools across Canada. We are also in the process of looking at research together. We are trying to find ways of working together. At the commission, we believe profoundly in partnership. We find that the Canadian Race Relations Foundation is the ideal partner for the commission in all those areas.

**Senator Poy:** Education is provincial; your commission is federal. Would you be overstepping your bounds by going into education in the different provinces?

**Ms Falardeau-Ramsay:** We must be very careful. For example, in Saskatchewan, we have worked with the provincial commission in designing some material for schools concerning Aboriginal children. In most of the provinces, that is the way we deal with schools. I am prevented, when making my rounds, from speaking to high school students or primary school students. I try to contact the board of education to let them know what is at their disposal from the commission. It is a delicate subject. It is better to go through the provincial human rights commission.

[Translation]

**The Chairman:** Ms Falardeau-Ramsay, you already know of the Senate's interest in all matters relating to human rights. This has been confirmed today by the many questions and comments put to you. Your presentation has certainly given new life to our interest in this question of the future.

On behalf of all the honourable senators, I would like to thank you for your generous contribution. I also thank Mr. Théroux and Mr. Paré for being available.

**Senator Robichaud:** Honourable senators, I move that the Chairman of the Committee of the Whole now report that the Committee has completed its proceedings.

**The Chairman:** Is that agreed, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Honourable senators, the sitting is resumed.

[Later]

#### REPORT OF THE COMMITTEE OF THE WHOLE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, the Committee of the Whole, to which the study of the work of the Canadian Human

Rights Commission was referred, asks me to report that the committee has completed its deliberations.

[English]

#### CONFERENCE OF MENNONITES IN CANADA

##### PRIVATE BILL TO AMEND ACT OF INCORPORATION— REPORT OF COMMITTEE ADOPTED

On the Order:

Resuming debate on the consideration of the third report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill S-25, to amend the Act of incorporation of the Conference of Mennonites in Canada, with an amendment) presented in the Senate on April 26, 2001.

**The Hon. the Speaker:** Honourable senators, before going into the Committee of the Whole, we had left our business at a point where we were about to ask for an adjournment of the debate under Reports of Committee.

**Hon. Noël Kinsella (Deputy Leader of the Opposition):** Put the question.

**The Hon. the Speaker:** Before I put the question, I should advise honourable senators that Senator Corbin had indicated that he might wish to speak.

**Senator Kinsella:** He can speak at third reading.

**The Hon. the Speaker:** It is moved by the Honourable Senator Milne, seconded by the Honourable Senator Finnerty, that this report be now adopted. Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and report adopted.

**The Hon. the Speaker:** When shall this bill be read the third time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

[Translation]

#### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, in view of the late hour, I ask that all items appearing on the Order Paper remain in their present order until the next sitting of the Senate.

The Senate adjourned until Wednesday, May 2, 2001, at 1:30 p.m.



## **APPENDIX**

Officers of the Senate

The Ministry

Senators

(Listed according to seniority, alphabetically and by provinces)

Committees of the Senate

**THE SPEAKER**

THE HONOURABLE DANIEL P. HAYS

**THE LEADER OF THE GOVERNMENT**

THE HONOURABLE SHARON CARSTAIRS, P.C.

**THE LEADER OF THE OPPOSITION**

THE HONOURABLE JOHN LYNCH-STAUNTON

---

**OFFICERS OF THE SENATE****CLERK OF THE SENATE AND CLERK OF THE PARLIAMENTS**

PAUL BÉLISLE

**DEPUTY CLERK, PRINCIPAL CLERK, LEGISLATIVE SERVICES**

GARY O'BRIEN

**LAW CLERK AND PARLIAMENTARY COUNSEL**

MARK AUDCENT

**USHER OF THE BLACK ROD**

MARY McLAREN

**THE MINISTRY**

According to Precedence

(May 1, 2001)

The Right Hon. Jean Chrétien	Prime Minister
The Hon. Herbert Eser Gray	Deputy Prime Minister
The Hon. David M. Collett	Minister of Transport
The Hon. David Anderson	Minister of the Environment
The Hon. Ralph E. Goodale	Minister of Natural Resources and Minister responsible for the Canadian Wheat Board
The Hon. Brian Tobin	Minister of Industry
The Hon. Sheila Copps	Minister of Canadian Heritage
The Hon. John Manley	Minister of Foreign Affairs
The Hon. Paul Martin	Minister of Finance
The Hon. Arthur C. Eggleton	Minister of National Defence
The Hon. Anne McLellan	Minister of Justice and Attorney General of Canada
The Hon. Allan Rock	Minister of Health
The Hon. Lawrence MacAulay	Solicitor General of Canada
The Hon. Alfonso Gagliano	Minister of Public Works and Government Services
The Hon. Lucienne Robillard	President of the Treasury Board and Minister responsible for Infrastructure
The Hon. Martin Cauchon	Minister of National Revenue and Secretary of State (Economic Development Agency of Canada for the Regions of Quebec)
The Hon. Jane Stewart	Minister of Human Resources Development
The Hon. Stéphane Dion	President of the Queen's Privy Council for Canada and Minister of Intergovernmental Affairs
The Hon. Pierre Pettigrew	Minister of International Trade
The Hon. Don Boudria	Leader of the Government in the House of Commons
The Hon. Lyle Vancilief	Minister of Agriculture and Agri-Food
The Hon. Herb Dhaliwal	Minister of Fisheries and Oceans
The Hon. Ronald J. Duhamel	Minister of Veterans Affairs and Secretary of State (Western Economic Diversification) (Francophonie)
The Hon. Claudette Bradshaw	Minister of Labour
The Hon. Robert Daniel Nault	Minister of Indian Affairs and Northern Development
The Hon. Maria Minna	Minister for International Cooperation
The Hon. Elinor Caplan	Minister for Citizenship and Immigration
The Hon. Sharon Carstairs	Leader of the Government in the Senate
The Hon. Robert G. Thibault	Minister of State (Atlantic Canada Opportunities Agency)
The Hon. Ethel Blondin-Andrew	Secretary of State (Children and Youth)
The Hon. Hedy Fry	Secretary of State (Multiculturalism) (Status of Women)
The Hon. David Kilgour	Secretary of State (Latin America and Africa)
The Hon. James Scott Peterson	Secretary of State (International Financial Institutions)
The Hon. Andrew Mitchell	Secretary of State (Rural Development) (Federal Economic Development Initiative for Northern Ontario)
The Hon. Gilbert Normand	Secretary of State (Science, Research and Development)
The Hon. Denis Coderre	Secretary of State (Amateur Sport)
The Hon. Rey Pagtakhan	Secretary of State (Asia-Pacific)



## SENATORS OF CANADA

## ACCORDING TO SENIORITY

(May 1, 2001)

Senator	Designation	Post Office Address
THE HONOURABLE		
Herbert O. Sparrow	Saskatchewan	North Battleford, Sask.
Edward M. Lawson	Vancouver	Vancouver, B.C.
Bernard Alasdair Graham, P.C.	The Highlands	Sydney, N.S.
Jack Austin, P.C.	Vancouver South	Vancouver, B.C.
Willie Adams	Nunavut	Rankin Inlet, Nunavut
Lowell Murray, P.C.	Pakenham	Ottawa, Ont.
C. William Doody	Harbour Main-Bell Island	St. John's, Nfld.
Peter Alan Stollery	Bloor and Yonge	Toronto, Ont.
Peter Michael Pitfield, P.C.	Ottawa-Vanier	Ottawa, Ont.
E. Leo Kolber	Victoria	Westmount, Que.
Michael Kirby	South Shore	Halifax, N.S.
Jerahmiel S. Grafstein	Metro Toronto	Toronto, Ont.
Anne C. Cools	Toronto-Centre-York	Toronto, Ont.
Charlie Watt	Inkerman	Kuujuuaq, Que.
Daniel Phillip Hays, <i>Speaker</i>	Calgary	Calgary, Alta.
Joyce Fairbairn, P.C.	Lethbridge	Lethbridge, Alta.
Colin Kenny	Rideau	Ottawa, Ont.
Pierre De Bané, P.C.	De la Vallière	Montreal, Que.
Eymard Georges Corbin	Grand-Sault	Grand-Sault, N.B.
Brenda Mary Robertson	Riverview	Shediac, N.B.
Jean-Maurice Simard	Edmundston	Edmundston, N.B.
Norman K. Atkins	Markham	Toronto, Ont.
Ethel Cochrane	Newfoundland	Port-au-Port, Nfld.
Eileen Rossiter	Prince Edward Island	Charlottetown, P.E.I.
Mira Spivak	Manitoba	Winnipeg, Man.
Roch Bolduc	Gulf	Sainte-Foy, Que.
Gérald-A. Beaudoin	Rigaud	Hull, Que.
Pat Carney, P.C.	British Columbia	Vancouver, B.C.
Gerald J. Comeau	Nova Scotia	Church Point, N.S.
Consiglio Di Nino	Ontario	Downsview, Ont.
Donald H. Oliver	Nova Scotia	Halifax, N.S.
Noël A. Kinsella	Fredericton-York-Sunbury	Fredericton, N.B.
John Buchanan, P.C.	Nova Scotia	Halifax, N.S.
Mabel Margaret DeWare	Moncton	Moncton, N.B.
John Lynch-Staunton	Grandville	Georgeville, Que.
James Francis Kelleher, P.C.	Ontario	Sault Ste. Marie, Ont.
J. Trevor Eytan	Ontario	Caledon, Ont.
Wilbert Joseph Keon	Ottawa	Ottawa, Ont.
Michael Arthur Meighen	St. Marys	Toronto, Ont.
J. Michael Forrester	Dartmouth and Eastern Shore	Dartmouth, N.S.
Janis G. Johnson	Winnipeg-Interlake	Winnipeg, Man.
A. Raynell Andreychuk	Regina	Regina, Sask.
Jean-Claude Rivest	Stadacona	Quebec, Que.
Terrance R. Stratton	Red River	St. Norbert, Man.
Marcel Prud'homme, P.C.	La Salle	Montreal, Que.
Leonard J. Gustafson	Saskatchewan	Macoun, Sask.
Erminie Joy Cohen	New Brunswick	Saint John, N.B.
David Tkachuk	Saskatchewan	Saskatoon, Sask.
W. David Angus	Alma	Montreal, Que.

## ACCORDING TO SENIORITY

Senator	Designation	Post Office Address
THE HONOURABLE		
Pierre Claude Nolin	De Salaberry	Quebec, Que.
Marjory LeBreton	Ontario	Manotick, Ont.
Gerry St. Germain, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.
Lise Bacon	De la Durantaye	Laval, Que.
Sharon Carstairs, P.C.	Manitoba	Victoria Beach, Man.
Landon Pearson	Ontario	Ottawa, Ont.
Jean-Robert Gauthier	Ottawa-Vanier	Ottawa, Ontario
John G. Bryden	New Brunswick	Bayfield, N.B.
Rose-Marie Losier-Cool	Tracadie	Bathurst, N.B.
Céline Hervieux-Payette, P.C.	Bedford	Montreal, Que.
William H. Rompkey, P.C.	Labrador	North West River, Labrador, Nfld.
Lorna Milne	Peel County	Brampton, Ont.
Marie-P. Poulin	Nord de l'Ontario/Northern Ontario	Ottawa, Ont.
Shirley Maheu	Rougemont	Saint-Laurent, Que.
Nicholas William Taylor	Sturgeon	Bon Accord, Alta.
Léonce Mercier	Mille Isles	Saint-Élie d'Orford, Que.
Wilfred P. Moore	Stanhope St./Bluenose	Chester, N.S.
Lucie Pépin	Shawinigan	Montreal, Que.
Fernand Robichaud, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.
Catherine S. Callbeck	Prince Edward Island	Central Bedeque, P.E.I.
Marisa Ferretti Barth	Repentigny	Pierrefonds, Que.
Serge Joyal, P.C.	Kennebec	Montreal, Que.
Thelma J. Chalifoux	Alberta	Morinville, Alta.
Joan Cook	Newfoundland	St. John's, Nfld.
Ross Fitzpatrick	Okanagan-Similkameen	Kelowna, B.C.
The Very Reverend Dr. Lois M. Wilson	Toronto	Toronto, Ont.
Francis William Mahovlich	Toronto	Toronto, Ont.
Richard H. Kroft	Manitoba	Winnipeg, Man.
Douglas James Roche	Edmonton	Edmonton, Alta.
Joan Thorne Fraser	De Lorimier	Montreal, Que.
Aurélien Gill	Wellington	Mashteuiatsh, Pointe-Bleue, Que.
Vivienne Poy	Toronto	Toronto, Ont.
Sheila Finestone, P.C.	Montarville	Montreal, Que.
Ione Christensen	Yukon Territory	Whitehorse, Y.T.
George Furey	Newfoundland and Labrador	St. John's, Nfld.
Nick G. Sibbeston	Northwest Territories	Fort Simpson, N.W.T.
Isobel Finnerty	Ontario	Burlington, Ont.
John Wiebe	Saskatchewan	Swift Current, Sask.
Tommy Banks	Alberta	Edmonton, Alta.
Jane Marie Cordy	Nova Scotia	Dartmouth, N.S.
Raymond C. Setlakwe	The Laurentides	Thetford Mines, Que.
Yves Morin	Lauzon	Quebec, Que.
Elizabeth M. Hubley	Prince Edward Island	Kensington, P.E.I.
Jim Tunney	Ontario	Grafton, Ont.

## SENATORS OF CANADA

## ALPHABETICAL LIST

(May 1, 2001)

Senator	Designation	Post Office Address	Political Affiliation
THE HONOURABLE			
Adams, Willie	Nunavut	Rankin Inlet, Nunavut	Lib
Andreychuk, A. Raynell	Regina	Regina, Sask.	PC
Angus, W. David	Alma	Montreal, Que.	PC
Atkins, Norman K.	Markham	Toronto, Ont.	PC
Austin, Jack, P.C.	Vancouver South	Vancouver, B.C.	Lib
Bacon, Lise	De la Durantaye	Laval, Que.	Lib
Banks, Tommy	Alberta	Edmonton, Alta.	Lib
Beaudoin, Gérald-A.	Rigaud	Hull, Que.	PC
Bolduc, Roch	Gulf	Sainte-Foy, Que.	PC
Bryden, John G.	New Brunswick	Bayfield, N.B.	Lib
Buchanan, John, P.C.	Halifax	Halifax, N.S.	PC
Callbeck, Catherine S.	Prince Edward Island	Central Bedeque, P.E.I.	Lib
Carney, Pat, P.C.	British Columbia	Vancouver, B.C.	PC
Carstairs, Sharon, P.C.	Manitoba	Victoria Beach, Man.	Lib
Chalifoux, Thelma J.	Alberta	Morinville, Alta.	Lib
Christensen, Ione	Yukon Territory	Whitehorse, Y.T.	Lib
Cochrane, Ethel	Newfoundland	Port-au-Port, Nfld.	PC
Cohen, Erminie Joy	New Brunswick	Saint John, N.B.	PC
Comeau, Gerald J.	Nova Scotia	Church Point, N.S.	PC
Cook, Joan	Newfoundland	St. John's, Nfld.	Lib
Cools, Anne C.	Toronto-Centre-York	Toronto, Ont.	Lib
Corbin, Eymard Georges	Grand-Sault	Grand-Sault, N.B.	Lib
Cordy, Jane Marie	Nova Scotia	Dartmouth, N.S.	Lib
De Bané, Pierre, P.C.	De la Vallière	Montreal, Que.	Lib
DeWare, Mabel Margaret	Moncton	Moncton, N.B.	PC
Di Nino, Consiglio	Ontario	Downsview, Ont.	PC
Doody, C. William	Harbour Main-Bell Island	St. John's, Nfld.	PC
Eyton, J. Trevor	Ontario	Caledon, Ont.	PC
Fairbairn, Joyce, P.C.	Lethbridge	Lethbridge, Alta.	Lib
Ferretti Barth, Marisa	Repentigny	Pierrefonds, Que.	Lib
Finestone, Sheila, P.C.	Montarville	Montreal, Que.	Lib
Finnerty, Isobel	Ontario	Burlington, Ont.	Lib
Fitzpatrick, Ross	Okanagan-Similkameen	Kelowna, B.C.	Lib
Forrestall, J. Michael	Dartmouth and the Eastern Shore	Dartmouth, N.S.	PC
Fraser, Joan Thorne	De Lorimier	Montreal, Que.	Lib
Furey, George	Newfoundland and Labrador	St. John's, Nfld.	Lib
Gauthier, Jean-Robert	Ottawa-Vanier	Ottawa, Ont.	Lib
Gill, Aurélien	Wellington	Mashteuiatsh, Pointe-Bleue, Que.	Lib
Grafstein, Jerahmiel S.	Metro Toronto	Toronto, Ont.	Lib
Graham, Bernard Alasdair, P.C.	The Highlands	Sydney, N.S.	Lib
Gustafson, Leonard J.	Saskatchewan	Macoun, Sask.	PC
Hays, Daniel Phillip, <i>Speaker</i>	Calgary	Calgary, Alta.	Lib
Hervieux-Payette, Céline, P.C.	Bedford	Montreal, Que.	Lib
Hublely, Elizabeth M.	Prince Edward Island	Kensington, P.E.I.	Lib
Johnson, Janis G.	Winnipeg-Interlake	Winnipeg, Man.	PC
Joyal, Serge, P.C.	Kennebec	Montreal, Que.	Lib
Kelleher, James Francis, P.C.	Ontario	Sault Ste. Marie, Ont.	PC
Kenny, Colin	Rideau	Ottawa, Ont.	Lib
Keon, Wilbert Joseph	Ottawa	Ottawa, Ont.	PC
Kinsella, Noël A.	Fredericton-York-Sunbury	Fredericton, N.B.	PC
Kirby, Michael	South Shore	Halifax, N.S.	Lib



## SENATORS OF CANADA

Senator	Designation	Post Office Address	Political Affiliation
THE HONOURABLE			
Kolber, E. Leo	Victoria	Westmount, Que.	Lib
Kroft, Richard H.	Manitoba	Winnipeg, Man.	Lib
Lawson, Edward M.	Vancouver	Vancouver, B.C.	Ind
LeBreton, Marjory	Ontario	Manotick, Ont.	PC
Losier-Cool, Rose-Marie	Tracadie	Bathurst, N.B.	Lib
Lynch-Staunton, John	Grandville	Georgeville, Que.	PC
Maheu, Shirley	Rougemont	Saint-Laurent, Que.	Lib
Mahovlich, Francis William	Toronto	Toronto, Ont.	Lib
Meighen, Michael Arthur	St. Marys	Toronto, Ont.	PC
Mercier, Léonce	Mille Isles	Saint-Élie d'Orford, Que.	Lib
Milne, Lorna	Peel County	Brampton, Ont.	Lib
Moore, Wilfred P.	Stanhope St./Bluenose	Chester, N.S.	Lib
Morin, Yves	Lauzon	Quebec, Que.	Lib
Murray, Lowell, P.C.	Pakenham	Ottawa, Ont.	PC
Nolin, Pierre Claude	De Salaberry	Quebec, Que.	PC
Oliver, Donald H.	Nova Scotia	Halifax, N.S.	PC
Pearson, Landon	Ontario	Ottawa, Ontario	Lib
Pépin, Lucie	Shawinigan	Montreal, Que.	Lib
Pitfield, Peter Michael, P.C.	Ottawa-Vanier	Ottawa, Ont.	Ind
Poulin, Marie-P.	Nord de l'Ontario/Northern Ontario	Ottawa, Ont.	Lib
Poy, Vivienne	Toronto	Toronto, Ont.	Lib
Prud'homme, Marcel, P.C.	La Salle	Montreal, Que.	Ind
Rivest, Jean-Claude	Stadacona	Quebec, Que.	PC
Robertson, Brenda Mary	Riverview	Shediac, N.B.	PC
Robichaud, Fernand, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.	Lib
Roche, Douglas James	Edmonton	Edmonton, Alta.	Ind
Rompkey, William H., P.C.	Labrador	North West River, Labrador, Nfld.	Lib
Rossiter, Eileen	Prince Edward Island	Charlottetown, P.E.I.	PC
St. Germain, Gerry, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.	CA
Setlakwe, Raymond C.	The Laurentides	Thetford Mines, Que.	Lib
Sibbeston, Nick G.	Northwest Territories	Fort Simpson, N.W.T.	Lib
Simard, Jean-Maurice	Edmundston	Edmundston, N.B.	PC
Sparrow, Herbert O.	Saskatchewan	North Battleford, Sask.	Lib
Spivak, Mira	Manitoba	Winnipeg, Man.	PC
Stollery, Peter Alan	Bloor and Yonge	Toronto, Ont.	Lib
Stratton, Terrance R.	Red River	St. Norbert, Man.	PC
Taylor, Nicholas William	Sturgeon	Bon Accord, Alta.	Lib
Tkachuk, David	Saskatchewan	Saskatoon, Sask.	PC
Tunney, Jim	Ontario	Grafton, Ont.	Lib
Watt, Charlie	Inkerman	Kuujuuaq, Que.	Lib
Wiebe, John	Saskatchewan	Swift Current, Sask.	Lib
Wilson, The Very Reverend Dr. Lois M.	Toronto	Toronto, Ont.	Ind

# SENATORS OF CANADA

## BY PROVINCE AND TERRITORY

(May 1, 2001)

**ONTARIO—24**

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Lowell Murray, P.C.	Pakenham	Ottawa
2 Peter Alan Stollery	Bloor and Yonge	Toronto
3 Peter Michael Pitfield, P.C.	Ottawa-Vanier	Ottawa
4 Jerahmiel S. Grafstein	Metro Toronto	Toronto
5 Anne C. Cools	Toronto-Centre-York	Toronto
6 Colin Kenny	Rideau	Ottawa
7 Norman K. Atkins	Markham	Toronto
8 Consiglio Di Nino	Ontario	Downsview
9 James Francis Kelleher, P.C.	Ontario	Sault Ste. Marie
10 John Trevor Eyton	Ontario	Caledon
11 Wilbert Joseph Keon	Ottawa	Ottawa
12 Michael Arthur Meighen	St. Marys	Toronto
13 Marjory LeBreton	Ontario	Manotick
14 Landon Pearson	Ontario	Ottawa
15 Jean-Robert Gauthier	Ottawa-Vanier	Ottawa
16 Lorna Milne	Peel County	Brampton
17 Marie-P. Poulin	Northern Ontario	Ottawa
18 The Very Reverend Dr. Lois M. Wilson	Toronto	Toronto
19 Francis William Mahovlich	Toronto	Toronto
20 Vivienne Poy	Toronto	Toronto
21 Isobel Finnerty	Ontario	Burlington
22 Jim Tunney	Ontario	Grafton
23		
24		

## SENATORS BY PROVINCE AND TERRITORY

## QUEBEC—24

Senator	Designation	Post Office Address
THE HONOURABLE		
1 E. Leo Kolber .....	Victoria .....	Westmount
2 Charlie Watt .....	Inkerman .....	Kuujuuaq
3 Pierre De Bané, P.C. ....	De la Vallière .....	Montreal
4 Roch Bolduc .....	Gulf .....	Sainte-Foy
5 Gérald-A. Beaudoin .....	Rigaud .....	Hull
6 John Lynch-Staunton .....	Grandville .....	Georgeville
7 Jean-Claude Rivest .....	Stadacona .....	Quebec
8 Marcel Prud'homme, P.C. ....	La Salle .....	Montreal
9 W. David Angus .....	Alma .....	Montreal
10 Pierre Claude Nolin .....	De Salaberry .....	Quebec
11 Lise Bacon .....	De la Durantaye .....	Laval
12 Céline Hervieux-Payette, P.C. ....	Bedford .....	Montreal
13 Shirley Maheu .....	Rougemont .....	Ville de Saint-Laurent
14 Léonce Mercier .....	Mille Isles .....	Saint-Élie d'Orford
15 Lucie Pépin .....	Shawinigan .....	Montreal
16 Marisa Ferretti Barth .....	Repentigny .....	Pierrefonds
17 Serge Joyal, P.C. ....	Kennebec .....	Montreal
18 Joan Thorne Fraser .....	De Lorimier .....	Montreal
19 Aurélien Gill .....	Wellington .....	Mashteuiatsh, Pointe-Bleue
20 Sheila Finestone, P.C. ....	Montarville .....	Montreal
21 Raymond C. Setlakwe .....	The Laurentides .....	Thetford Mines
22 Yves Morin .....	Lauzon .....	Quebec
23 .....	.....	.....
24 .....	.....	.....



## SENATORS BY PROVINCE—MARITIME DIVISION

## NOVA SCOTIA—10

	Senator	Designation	Post Office Address
	THE HONOURABLE		
1	Bernard Alasdair Graham, P.C.	The Highlands	Sydney
2	Michael Kirby	South Shore	Halifax
3	Gerald J. Comeau	Nova Scotia	Church Point
4	Donald H. Oliver	Nova Scotia	Halifax
5	John Buchanan, P.C.	Halifax	Halifax
6	J. Michael Forrestall	Dartmouth and Eastern Shore	Dartmouth
7	Wilfred P. Moore	Stanhope St./Bluenose	Chester
8	Jane Marie Cordy	Nova Scotia	Dartmouth
9			
10			

## NEW BRUNSWICK—10

	THE HONOURABLE		
1	Eymard Georges Corbin	Grand-Sault	Grand-Sault
2	Brenda Mary Robertson	Riverview	Shediac
3	Jean-Maurice Simard	Edmundston	Edmundston
4	Noël A. Kinsella	Fredericton-York-Sunbury	Fredericton
5	Mabel Margaret DeWare	Moncton	Moncton
6	Erminie Joy Cohen	New Brunswick	Saint John
7	John G. Bryden	New Brunswick	Bayfield
8	Rose-Marie Losier-Cool	Tracadie	Bathurst
9	Fernand Robichaud, P.C.	Saint-Louis-de-Kent	Saint-Louis-de-Kent
10			

## PRINCE EDWARD ISLAND—4

	THE HONOURABLE		
1	Eileen Rossiter	Prince Edward Island	Charlottetown
2	Catherine S. Callbeck	Prince Edward Island	Central Bedeque
3	Elizabeth M. Hubley	Prince Edward Island	Kensington
4			

## SENATORS BY PROVINCE—WESTERN DIVISION

## MANITOBA—6

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Mira Spivak .....	Manitoba .....	Winnipeg
2 Janis G. Johnson .....	Winnipeg-Interlake .....	Winnipeg
3 Terrance R. Stratton .....	Red River .....	St. Norbert
4 Sharon Carstairs, P.C. ....	Manitoba .....	Victoria Beach
5 Richard H. Kroft .....	Manitoba .....	Winnipeg
6 .....		

## BRITISH COLUMBIA—6

THE HONOURABLE		
1 Edward M. Lawson .....	Vancouver .....	Vancouver
2 Jack Austin, P.C. ....	Vancouver South .....	Vancouver
3 Pat Carney, P.C. ....	British Columbia .....	Vancouver
4 Gerry St. Germain, P.C. ....	Langley-Pemberton-Whistler ..	Maple Ridge
5 Ross Fitzpatrick .....	Okanagan-Similkameen .....	Kelowna
6 .....		

## SASKATCHEWAN—6

THE HONOURABLE		
1 Herbert O. Sparrow .....	Saskatchewan .....	North Battleford
2 A. Raynell Andreychuk .....	Regina .....	Regina
3 Leonard J. Gustafson .....	Saskatchewan .....	Macoun
4 David Tkachuk .....	Saskatchewan .....	Saskatoon
5 John Wiebe .....	Saskatchewan .....	Swift Current
6 .....		

## ALBERTA—6

THE HONOURABLE		
1 Daniel Phillip Hays, <i>Speaker</i> .....	Calgary .....	Calgary
2 Joyce Fairbairn, P.C. ....	Lethbridge .....	Lethbridge
3 Nicholas William Taylor .....	Sturgeon .....	Bon Accord
4 Thelma J. Chalifoux .....	Alberta .....	Morinville
5 Douglas James Roche .....	Edmonton .....	Edmonton
6 Tommy Banks .....	Alberta .....	Edmonton

## SENATORS BY PROVINCE AND TERRITORY

## NEWFOUNDLAND—6

Senator	Designation	Post Office Address
THE HONOURABLE		
1 C. William Doody .....	Harbour Main-Bell Island ....	St. John's
2 Ethel Cochrane .....	Newfoundland .....	Port-au-Port
3 William H. Rompkey, P.C. ....	Labrador .....	North West River, Labrador
4 Joan Cook .....	Newfoundland .....	St. John's
5 George Furey .....	Newfoundland and Labrador .	St. John's
6 .....		

## NORTHWEST TERRITORIES—1

THE HONOURABLE		
1 Nick G. Sibbeston .....	Northwest Territories .....	Fort Simpson

## NUNAVUT—1

THE HONOURABLE		
1 Willie Adams .....	Nunavut .....	Rankin Inlet

## YUKON TERRITORY—1

THE HONOURABLE		
1 Ione Christensen .....	Yukon Territory .....	Whitehorse



## ALPHABETICAL LIST OF STANDING, SPECIAL AND JOINT COMMITTEES

(As of May 1, 2001)

\*Ex Officio Member

## ABORIGINAL PEOPLES

**Chair:** Honourable Senator Chalifoux**Deputy Chair:** Honourable Senator Johnson**Honourable Senators:**

Carney	Christensen,	Johnson,	Rompkey,
*Carstairs (or Robichaud)	Cochrane,	*Lynch-Staunton, (or Kinsella)	Sibbeston,
Chalifoux,	Fraser,	Pearson,	St. Germain,
	Gill,		Tkachuk,

*Original Members as nominated by the Committee of Selection*

Carney, \*Carstairs (or Robichaud), Chalifoux, Christensen, Cochrane, Cordy, Gill,  
Johnson, \*Lynch-Staunton (or Kinsella), Pearson, Rompkey, Sibbeston, Tkachuk, Wilson.

SUBCOMMITTEE ON ABORIGINAL ECONOMIC DEVELOPMENT IN RELATION  
TO NORTHERN NATIONAL PARKS**Chair:** Honourable Senator Christensen**Deputy Chair:** Honourable Senator Cochrane**Honourable Senators:**

*Carstairs (or Robichaud)	Christensen,	Johnson,	Sibbeston,
Chalifoux,	Cochrane,	*Lynch-Staunton, (or Kinsella)	

## AGRICULTURE AND FORESTRY

**Chair:** Honourable Senator Gustafson**Deputy Chair:** Honourable Senator Wiebe**Honourable Senators:**

*Carstairs (or Robichaud)	Gill,	*Lynch-Staunton, (or Kinsella)	Stratton,
Chalifoux,	Gustafson,	Oliver,	Tkachuk,
Fairbairn,	Hubley,		Tunney,
	LeBreton,		Wiebe,

*Original Members as nominated by the Committee of Selection*

\*Carstairs (or Robichaud), Chalifoux, Fairbairn, Fitzpatrick, Gill, Gustafson, LeBreton,  
\*Lynch-Staunton (or Kinsella), Milne, Oliver, Stratton, Taylor, Tkachuk, Wiebe.

**BANKING, TRADE AND COMMERCE**

**Chair:** Honourable Senator Kolber  
**Honourable Senators:**

Angus,	Hervieux-Payette,
*Carstairs (or Robichaud)	Kelleher,
	Kolber,
Furey,	Kroft,

**Deputy Chair:** Honourable Senator Tkachuk

*Lynch-Staunton, (or Kinsella)	Poulin,
Meighen,	Setlakwe,
Oliver,	Tkachuk,
	Wiebe,

*Original Members as nominated by the Committee of Selection*

Angus, \*Carstairs (or Robichaud), Furey, Hervieux-Payette, Kelleher, Kolber, Kroft,  
 \*Lynch-Staunton (or Kinsella), Meighen, Oliver, Poulin, Setklawe, Tkachuk., Wiebe.

---

**DEFENCE AND SECURITY**

**Chair:** Honourable Senator  
**Honourable Senators:**

Atkins,	Cordy,
*Carstairs, (or Robichaud)	Forrestall,
	Hubley,

**Deputy Chair:** Honourable Senator

Kenny,	Pépin,
*Lynch-Staunton, (or Kinsella)	Rompkey,
Meighen,	Wiebe,

*Original Members as nominated by the Committee of Selection*

Atkins, \*Carstairs (or Robichaud), Cordy, Forrestall, Hubley, Kenny,  
 \*Lynch-Staunton (or Kinsella), Meighen, Pépin, Rompkey, Wiebe.

---

**ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES**

**Chair:** Honourable Senator Taylor  
**Honourable Senators:**

Adams,	Christensen,
Banks,	Cochrane,
Buchanan,	Eyton,
*Carstairs (or Robichaud)	Finnerty,

**Deputy Chair:** Honourable Senator Spivak

Kelleher,	Sibbeston,
Kenny,	Spivak,
*Lynch-Staunton, (or Kinsella)	Taylor,

*Original Members as nominated by the Committee of Selection*

Banks, Buchanan, \*Carstairs (or Robichaud), Christensen, Cochrane, Eyton, Finnerty,  
 Kelleher, Kenny, \*Lynch-Staunton (or Kinsella), Sibbeston, Spivak, Taylor, Watt.

---

## FISHERIES

**Chair:** Honourable Senator Comeau**Deputy Chair:** Honourable Senator Cook**Honourable Senators:**

Adams,	Chalifoux,
*Carstairs (or Robichaud)	Comeau,
Carney,	Cook,

Hubley,	Meighen,
*Lynch-Staunton, (or Kinsella)	Moore,
Mahovlich,	Robertson,
	Watt,

*Original Members as nominated by the Committee of Selection*

Adams, Callbeck, \*Carstairs (or Robichaud), Carney, Chalifoux, Comeau, Cook,  
\*Lynch-Staunton (or Kinsella), Mahovlich, Meighen, Molgat, Moore, Robertson, Watt.

## FOREIGN AFFAIRS

**Chair:** Honourable Senator Stollery**Deputy Chair:** Honourable Senator Andreychuk**Honourable Senators:**

Andreychuk,	*Carstairs (or Robichaud)
Austin,	Corbin,
Bolduc,	De Bané,
Carney,	

Di Nino,	*Lynch-Staunton, (or Kinsella)
Grafstein,	Setlakwe,
Graham,	Stollery,
Losier-Cool,	

*Original Members as nominated by the Committee of Selection*

Andreychuk, Austin, Bolduc, Carney, \*Carstairs (or Robichaud), Corbin, De Bané, Di Nino, Grafstein,  
Graham, Losier-Cool, \*Lynch-Staunton (or Kinsella), Poulin, Stollery.

## HUMAN RIGHTS

**Chair:** Honourable Senator Andreychuk**Deputy Chair:** Honourable Senator Finestone**Honourable Senators:**

Andreychuk,	Ferretti Barth,
Beaudoin,	Finestone,
*Carstairs (or Robichaud)	Kinsella,

*Lynch-Staunton, (or Kinsella)	Poy,
Oliver,	Watt,
	Wilson,

*Original Members as nominated by the Committee of Selection*

Andreychuk, Beaudoin, \*Carstairs (or Robichaud), Ferretti Barth, Finestone,  
Kinsella, \*Lynch-Staunton (or Kinsella), Oliver, Poy, Watt, Wilson.



## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

**Chair:** Honourable Senator Kroft  
**Honourable Senators:**

Austin,	DeWare,
*Carstairs (or Robichaud)	Doody,
Comeau,	Forrestall,
De Bané,	Furey,
	Gauthier,

**Deputy Chair:** Honourable Senator DeWare

Kenny,	Milne,
Kroft,	Murray,
*Lynch-Staunton, (or Kinsella)	Poulin,
Maheu,	Stollery,

*Original Members as nominated by the Committee of Selection*

*Austin, \*Carstairs (or Robichaud), Comeau, De Bané, DeWare, Doody, Forrestall, Furey, Gauthier, Kenny, Kroft, \*Lynch-Staunton (or Kinsella), Maheu, Milne, Murray, Poulin, Stollery.*

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## LEGAL AND CONSTITUTIONAL AFFAIRS

**Chair:** Honourable Senator Milne  
**Honourable Senators:**

Andreychuk,	*Carstairs (or Robichaud)
Atkins,	
Beaudoin,	Cools,
Buchanan,	Fraser,

**Deputy Chair:** Honourable Senator Beaudoin

Grafstein,	Milne,
Joyal,	Moore,
*Lynch-Staunton, (or Kinsella)	Nolin,
	Pearson,

*Original Members as nominated by the Committee of Selection*

*Andreychuk, Atkins, Beaudoin, Buchanan, \*Carstairs (or Robichaud), Cools, Fraser, Grafstein, Joyal, \*Lynch-Staunton (or Kinsella), Milne, Moore, Nolin, Pearson.*

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## LIBRARY OF PARLIAMENT (Joint)

**Chair:** Honourable Senator Bryden  
**Honourable Senators:**

Beaudoin,	Cordy,
Bryden,	

**Deputy Chair:**

Oliver,	Poy,
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*Original Members agreed to by Motion of the Senate*

*Beaudoin, Bryden, Cordy, Oliver, Poy.*

---

## NATIONAL FINANCE

**Chair: Honourable Senator Murray****Deputy Chair: Honourable Senator Finnerty****Honourable Senators:**

Banks,	Cools,	Kinsella,	Mahovlich,
Bolduc,	Doody,	*Lynch-Staunton, (or Kinsella)	Murray,
*Carstairs (or Robichaud)	Ferretti Barth,		Stratton,
	Finnerty,		Tunney,

*Original Members as nominated by the Committee of Selection*

*Banks, Bolduc, \*Carstairs (or Robichaud), Cools, Doody, Finnerty, Ferretti Barth, Hervieux-Payette, Kinsella, Kirby, \*Lynch-Staunton (or Kinsella), Mahovlich, Murray, Stratton.*

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## OFFICIAL LANGUAGES (Joint)

**Chair: Honourable Senator Maheu****Deputy Chair:****Honourable Senators:**

Bacon,	Fraser,	Losier-Cool,	Rivest,
Beaudoin,	Gauthier,	Maheu,	Setlatkwe,
			Simard,

*Original Members agreed to by Motion of the Senate*

*Bacon, Beaudoin, Fraser, Gauthier, Losier-Cool, Maheu, Rivest, Setlatkwe, Simard.*

---

## PRIVILEGES, STANDING RULES AND ORDERS

**Chair: Honourable Senator Austin****Deputy Chair: Honourable Senator Stratton****Honourable Senators:**

Andreychuk,	Corbin,	Joyal,	Murray,
Austin,	DeWare,	Kroft,	Pitfield,
Bryden,	Di Nino,	Losier-Cool,	Poulin,
*Carstairs (or Robichaud)	Gauthier,	*Lynch-Staunton, (or Kinsella)	Rossiter,
	Grafstein,		Stratton,

*Original Members as nominated by the Committee of Selection*

*Andreychuk, Austin, Bryden, \*Carstairs (or Robichaud), DeWare, Di Nino, Gauthier, Grafstein, Hervieux-Payette, Joyal, Kroft, Losier-Cool, \*Lynch-Staunton (or Kinsella), Murray, Poulin, Rossiter, Stratton.*

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### SCRUTINY OF REGULATIONS (Joint)

**Chair:** Honourable Senator Hervieux-Payette

**Deputy Chair:**

**Honourable Senators:**

Bryden,	Finestone,	Kinsella,	Nolin.
	Hervieux-Payette,	Moore,	

*Original Members agreed to by Motion of the Senate*

*Bacon, Bryden, Finestone, Hervieux-Payette, Kinsella, Moore, Nolin.*

---

### SELECTION

**Chair:** Honourable Senator Mercier

**Deputy Chair:**

**Honourable Senators:**

Austin,	DeWare,	Kinsella,	Mercier,
*Carstairs (or Robichaud)	Fairbairn,	LeBreton,	Robertson.
Corbin,	Graham,	*Lynch-Staunton, (or Kinsella)	

*Original Members agreed to by Motion of the Senate*

*Austin, \*Carstairs (or Robichaud), Corbin, DeWare, Fairbairn, Graham, Kinsella  
LeBreton, \*Lynch-Staunton (or Kinsella), Mercier, Murray.*

---

### SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

**Chair:** Honourable Senator Kirby

**Deputy Chair:** Honourable Senator LeBreton

**Honourable Senators:**

Callbeck,	Cook,	Kirby,	Pépin,
*Carstairs (or Robichaud)	Cordy,	LeBreton,	Robertson,
Cohen,	Fairbairn,	*Lynch-Staunton, (or Kinsella)	Roche.
	Graham.		

*Original Members as nominated by the Committee of Selection*

*Callbeck, \*Carstairs (or Robichaud), Cohen, Cook, Cordy, Fairbairn, Graham, Johnson,  
Kirby, LeBreton, \*Lynch-Staunton (or Kinsella), Pépin, Robertson, Roche.*

---



**TRANSPORT AND COMMUNICATIONS****Chair: Honourable Senator Bacon****Deputy Chair: Honourable Senator Forrestall****Honourable Senators:**

Adams,	De Bané,	Hubley,	Poulin,
Bacon,	Eyton,	*Lynch-Staunton,	Sparrow,
*Carstairs	Finestone,	(or Kinsella)	Spivak,
(or Robichaud)	Forrestall,	Maheu,	

***Original Members as nominated by the Committee of Selection***

*Adams, Angus, Bacon, Callbeck, \*Carstairs (or Robichaud), Christensen, Eyton, Finestone, Fitzpatrick, Forrestall, \*Lynch-Staunton (or Kinsella), Rompkey, Setlakwe, Spivak.*

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**THE SPECIAL SENATE COMMITTEE ON ILLEGAL DRUGS****Chair: Honourable Senator Nolin****Deputy Chair: Honourable Senator Kenny****Honourable Senators:**

Banks,	Kenny,	*Lynch-Staunton,	Nolin,
*Carstairs		(or Kinsella)	Rossiter,
(or Robichaud)		Maheu,	

***Original Members as agreed to by Motion of the Senate***

*Banks, \*Carstairs (or Robichaud), Kenny, \*Lynch-Staunton (or Kinsella), Maheu, Nolin, Rossiter.*

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CANADA

# Debates of the Senate

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1st SESSION

•

37th PARLIAMENT

•

VOLUME 139

•

NUMBER 31

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OFFICIAL REPORT  
(HANSARD)

Wednesday, May 2, 2001

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THE HONOURABLE DAN HAYS  
SPEAKER



## CONTENTS

(Daily index of proceedings appears at back of this issue.)

## OFFICIAL REPORT

### CORRECTION

**The Hon. the Speaker:** Before I recognize a senator, I have heard Senator Robichaud, but I point out to the chamber that Senator Beaudoin has a point of order that he wishes to raise today. Points of order are matters that should be given special consideration.

Accordingly, before returning to Senator Robichaud, I recognize Senator Beaudoin on his point of order.

**Hon. Gérard-A. Beaudoin:** Honourable senators, this will take only two or three minutes. I wanted to correct a sentence I spoke in the inquiry on the national anthem.

In the *Debates of the Senate* of April 26, 2001, at page 706, second column, third paragraph, the second last sentence reads:

In the present case, the words "of thine" would be substituted by the words "thy sons."

I should like to make the following correction:

In the present case, the words "thy sons" would be replaced by the words "of thine".

I should like to make the same correction to the French version of the *Debates of the Senate* of April 26, 2001, at page 706, second column, third paragraph, second last sentence.

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## THE SENATE

Wednesday, May 2, 2001

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### THE HONOURABLE RAYMOND C. SETLAKWE

##### CONGRATULATIONS ON BIRTH OF FIRST GREAT-GRANDSON

**Hon Vivienne Poy:** Honourable senators, it gives me great pleasure today to congratulate Senator Setlakwe on the birth of his first great-grandchild, Philippe Duguay, on April 18, 2001. Senator Setlakwe told me that he is the youngest great-grandfather in the Senate. I think we would all agree that he looks very young and vigorous to be a great-grandfather.

Philippe weighed 6.5 pounds at birth and was 21 inches in length. He is the first child of Senator Setlakwe's grandson, Jonathan, and his wife, Chantal. Philippe's mother says the boy is "very, very calm" and "very nice-looking," just like Senator Setlakwe.

Before Philippe was born, Senator Setlakwe told Chantal that he was sure the child would be a boy, and that he would be the first one to take him on a trip to the sea.

On behalf of all honourable senators in this chamber, I should like to wish Senator Setlakwe many trips to the sea with Philippe, and many more great-grandchildren in the future.

**Hon. Senators:** Hear, hear!

#### H.R.H. THE PRINCE OF WALES

##### VISIT TO YUKON

**Hon. Ione Christensen:** Honourable senators, I wish to report to you on the successful visit of His Royal Highness the Prince of Wales to the Yukon. His Royal Highness arrived on Saturday, April 28 at 7:00 p.m. to bright sunshine but very cold winds. It was a bracing experience, he having just left Saskatchewan where temperatures were in the high 20s.

I had the honour of accompanying His Royal Highness to all Yukon events. The first was the greeting by thousands of Yukoners at the SS *Klondike* on the banks of the Yukon River. Then on Sunday there was a visit to Whitehorse City Hall to

meet and greet seniors and present the Volunteer of the Year Awards.

There was then a one-hour flight to the community of Mayo, where it had been snowing all morning. It was the only community in the Yukon where snow fell during the Prince's visit. A total of four aircraft were involved. His Royal Highness was in an Armed Forces Otter, which was scheduled to land last of the four planes. However, due to the very soft runway conditions and the heavy snow, the media plane was required to circle for 20 minutes because it was much heavier and there was fear that it might get stuck, and that His Royal Highness' plane would have been unable to land.

Mayo was a delight. It is a small community of several hundred souls, but they had worked very hard to present the very best interpretive displays for their community. Under blue skies, the first stop was a new school just under construction, and a tree of knowledge was dedicated. There was a tea and displays at the community hall, which put the Prince an hour behind schedule, due to many questions. There was the opening of a new Canada Trail section and a brief hike on that trail, after which we headed back to Whitehorse, where a gala reception and dinner was held, and a display of the work of many Whitehorse artisans. His Royal Highness departed the dinner at 11:00 p.m.

The Armed Forces Airbus was on the tarmac waiting for him the next morning at 9:45. We were lined up for a farewell. I was to catch the Air Canada flight from Vancouver to Ottawa at ten o'clock. However, that flight was three hours late, and only five minutes before His Highness was to depart, I was asked if I would like to fly with him to Toronto. I said, "Yes."

Someone was dispatched to find my husband and retrieve my bags. My husband did not know where I had disappeared to. Five hours later, I was in Pearson airport.

I was wondering whether the Internal Economy Committee could look into the availability of an Airbus, or perhaps a Challenger for senators who have long distances to fly. It would cut six hours from my travel time and would be very much appreciated.

To say the royal visit was a success would be an understatement. His Royal Highness met, shook hands with and talked to hundreds of Yukoners, many of them excited children and young ladies wanting him to return with his two sons. The genuine warmth and relaxed atmosphere made this a memorable fifth royal visit to the Yukon.

## ROUTINE PROCEEDINGS

[English]

## OFFICIAL LANGUAGES

SECOND REPORT OF JOINT  
COMMITTEE PRESENTED

**Hon. Shirley Maheu**, Joint Chair of the Standing Joint Committee on Official Languages, presented the following report:

Wednesday, May 2, 2001

The Standing Joint Committee on Official Languages has the honour to present its

## SECOND REPORT

In accordance with its mandate under section 88 of the *Official Languages Act, Revised Statutes of Canada, 1985*, your Committee has undertaken a study and now presents its report on Broadcasting and Availability of the Debates and Proceedings of Parliament in both Official Languages.

Respectfully submitted,

SHIRLEY MAHEU  
*Joint Chair*

**The Hon. the Speaker:** When shall this report be taken into consideration?

On motion of Senator Maheu, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

(*For text of report, see today's Journals of the Senate, Appendix, p. 427*)

[Translation]

## ADJOURNMENT

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate, and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Thursday, May 3, 2001, at 1:30 p.m.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

CANADA ELECTIONS ACT  
ELECTORAL BOUNDARIES READJUSTMENT ACT

BILL TO AMEND—FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-9, to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

ELDORADO NUCLEAR LIMITED  
REORGANIZATION AND DIVESTITURE ACT  
PETRO-CANADA PUBLIC PARTICIPATION ACT

BILL TO AMEND—FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-3, to amend the Eldorado Nuclear Limited Reorganization and Divestiture Act and the Petro-Canada Public Participation Act, to which they desire the concurrence of the Senate.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

## PERSONAL WATERCRAFT BILL

FIRST READING

**Hon. Mira Spivak:** Honourable senators, I have the honour to present Bill S-26, concerning personal watercraft in navigable waters.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Spivak, bill placed on the Orders of the Day for second reading on Wednesday, May 9, 2001.



## QUESTION PERIOD

### THE SENATE

#### POSSIBILITY OF COMMITTEE TO VET GOVERNMENT APPOINTMENTS

**Hon. Terry Stratton:** Honourable senators, my question is directed to the Leader of the Government in the Senate. I would only make one comment beforehand. It is too bad that Senator Banks was not here yesterday to find out how we ask questions in Committee of the Whole. He may have learned something.

On the issue of government appointments, I wonder if the Leader of the Government in the Senate would be amenable to the Senate forming a committee to approve or vet appointments. I think it would be appropriate to do that at this stage particularly. Would she care to respond to that question?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the honourable senator has asked if I would approve the formation of a committee. Committees are not formed by the Leader of the Government in the Senate. Committees are formed by the Senate itself, usually upon the recommendation of the Rules Committee.

**Senator Stratton:** Would the Leader of the Government in the Senate be amenable to the formation of such a committee? Would she support it? The proposed committee structure could be quite useful, particularly if the Senate developed criteria for the determination of appointments. In other words, if someone is to be considered for an appointment, we would develop criteria for that position. Appointments would be made based on those criteria. Would the leader support that proposition?

**Senator Carstairs:** I thank the honourable senator, but I will not give a hypothetical answer to that hypothetical question.

**Senator Lynch-Staunton:** We do not have to read your book to know where you were at the time.

**Senator Stratton:** Honourable senators, this is a new style of politics. This is the way things are going. Honourable senators, I have virtually quoted the words of Senator Carstairs from a *Winnipeg Free Press* article dated September 21, 1989 wherein she said that the Liberals would implement such a proposal if they formed the next government. Would she care to comment on that now?

**Senator Carstairs:** Honourable senators, I thank the honourable senator for doing his homework in this particular case but he will, of course, know that that was a reference to a provincial matter in a provincial arena. Had I been fortunate enough to form the government in that province, I would have honoured my campaign commitment. However, I am not a provincial politician. I am in a chamber where the chamber makes its own rules.

**Senator Stratton:** That is precisely the point. If the minister as a member of this chamber believed in the proposition at that time, surely to goodness she believes in it now, because that is precisely what should take place.

**Senator Carstairs:** Honourable senators, that matter has not come before the chamber. Since it has not come before the chamber, it is a hypothetical question to me and, as I said before, I will not make hypothetical statements or answer hypothetical questions.

**Senator Stratton:** Honourable senators, I will close by saying that perhaps the *Free Press* should be reminded of what the honourable leader said then and what she is saying now.

**Senator Carstairs:** I would assume that the honourable senator will make that reminder at his earliest convenience and I would welcome it.

### CANADIAN HUMAN RIGHTS COMMISSION

#### RACISM ON INTERNET—LIMITATION OF RESOURCES TO RESPOND

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I do not understand that last set of exchanges but maybe it is the Manitoban way.

Yesterday afternoon we had what I thought was a very successful meeting of the Committee of the Whole with the Chief Commissioner of the Canadian Human Rights Commission. I thank the government for its work in facilitating that committee meeting.

• (1350)

One topic raised with the chief commissioner was hate on the Internet. My understanding of the information the chief commissioner provided us was that the Canadian Human Rights Commission's financial resources to concentrate in that area are very limited. The commissioner underscored for us that from a jurisdictional standpoint, the Canadian Human Rights Act does cover the Internet.

Would the minister be prepared to intervene with her colleagues the Minister of Canadian Heritage and the Secretary of State for Multiculturalism, whose department is serviced by the Department of Canadian Heritage, and the Minister of Industry, who has direct responsibility for the Internet and that new area of technology, to encourage them, thus the Government of Canada, to put some resources into new, contemporary, software-engineered means to deal with racism on the Internet?

Any of us can access this type of material by going on the Net. Honourable senators, the number of hate sites, particularly racist hate sites, such as anti-Semitic sites, has grown in the last three years from about 200 to over 5,000 today, and we are not responding to the problem.



**Hon. Sharon Carstairs (Leader of the Government):** I thank the Deputy Leader of the Opposition for that question. Like the honourable senator, I thought yesterday afternoon was an excellent example of the kind of work that this institution does, particularly in the way we interacted with the commissioner and the types of knowledgeable questions asked. I do not think the commissioner would mind if I told you that, during our few comments before the meeting began, she indicated her delight in coming before the Senate because of the quality of questions that came from members of this chamber on such occasions.

As to the specific question asked by the Deputy Leader of the Opposition, I am surprised he did not add the Minister of Justice to that list, because just recently, the Minister of Justice made an announcement with respect to pornography on the Internet, which is also, in my view, a form of hate crime. I would be delighted to take this matter forward to the ministers, and I will add the Minister of Justice to that list, to see if we cannot make more resources available to handle what has become a very significant problem, particularly with regard to children. Although parents can put some limits and put up some shields, most children have absolute and total access. If they have access to the Internet, most of them have access to everything on the Internet.

## FOREIGN AFFAIRS

### UNITED STATES—MISSILE DEFENCE SYSTEM— GOVERNMENT RESPONSE

**Hon. Douglas Roche:** Honourable senators, my question is directed to the Leader of the Government in the Senate. In a speech yesterday proposing a national missile defence system, U.S. President Bush said he was "not presenting our friends and allies with unilateral decisions already made" and that he wants to hear and take into account the views of countries such as Canada. Will the government seize this golden opportunity to tell the United States administration that missile defences that tear apart existing arms control arrangements will destabilize the world and are directly counter to Canada's interests?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, first, I think that we all welcome the statement of the President that he will consult with his allies before the introduction of any program. We also welcome the indications in the President's speech that the United States will continue to engage Russia and other concerned states like China on this same issue.

As to the specific remark that we should move quickly to tell them what we think of this defence strategy, the reality is that we do not know what this defence strategy will be, and President Bush in his own comments indicated that he did not know exactly what it would be.

**Senator Roche:** Honourable senators, I would respectfully enter a dissent to the comment that we do not know what the President intends. Even without specific nuts and bolts, the sense of direction that he proposes was made very clear yesterday and was vigorously objected to today by Canada's former Foreign Minister, Lloyd Axworthy. I would respectfully ask the minister if she would take forward the view that I expressed in the previous question and the one I will express in this question. Will the government, in its representations to the United States in these consultations that will now take place, emphasize that the rule of law must be followed in international affairs, that the United States has a legal obligation under the Nuclear Non-proliferation Treaty to enter comprehensive negotiations for the elimination of nuclear weapons and that such elimination is the best defence of all against missiles?

**Senator Carstairs:** Honourable senators, I, too, read with great interest the words of the Honourable Lloyd Axworthy this morning. The reality is we do not know yet. For example, the President of the United States talks about a variety of proposals but he has not indicated whether he wishes to amend the ABM treaty. If he were to make that suggestion, I can tell you that Canada would want to evaluate the impact of any such amendment on the nuclear balance and on global efforts at arms control and disarmament. If the President were to go another route and replace the ABM treaty, which he also seemed to indicate that he might do, then Canada would want to be assured that such an approach would maintain the significant gains that have been made over the last three decades under the existing treaty, as well as provide for enhanced international peace and security in the future.

## THE SENATE

### UNITED STATES—MISSILE DEFENCE SYSTEM—POSSIBILITY OF APPEARANCE OF MINISTERS OF FOREIGN AFFAIRS AND NATIONAL DEFENCE BEFORE STANDING COMMITTEE ON FOREIGN AFFAIRS

**Hon. Marcel Prud'homme:** Honourable senators, people say we do not know what Mr. Bush, the President, our friend, has in mind. My great concern, and I am sure it is the same with many senators and Canadians, would be that the morning he knows exactly what he wants, it will be too late for us to take sides, agree that he does not know exactly where he is going, but as soon as he does know, it will be too late.

I wish to make a suggestion. If my friend and ex-colleague from the House of Commons who is now chairman of the Foreign Affairs Committee were still present, I would ask him the question. There is much concern among Canadians. At least one of the ministers should appear, because they have made statements.

I am talking about the Minister of National Defence. I was the chairman of the House of Commons committees on Foreign Affairs and National Defence. The Defence people seem to already be on side. Many people in Foreign Affairs seem to be on side in the sense that they do not want to offend the President when and if he takes a decision. Surely, here is an occasion for the Senate to be informed on the topic raised by my esteemed colleague Senator Roche. We could take some precautions by informing members of the Senate, or those who are interested, and we should all be interested.

• (1400)

When the Chairman of the Foreign Affairs Committee comes back, I will make a request of him, or perhaps some other honourable senator will, to put aside his important work on the Russia and Ukraine situation for a day or two and consider this more immediate subject that could be completed without the Senate having a say. It will be too late once President Bush makes a decision.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for his question. Senator Prud'homme has raised two issues that I believe are very significant. The first is that President Bush, for the first time, has made it extremely clear that before any policy is developed in the United States, there will be wide consultations with the allies of that country, and that includes Canada. In addition, there will be broad consultations with Russia and China, so those are positive steps that came out of this announcement of yesterday.

With respect to the second part of the honourable senator's question, potentially two committees in the Senate might look at this matter: one, of course, is the Foreign Affairs Committee, which Senator Prud'homme indicated, and the other is the new Defence Committee that will be established, I understand, on Tuesday. Both could be mandated by this chamber to examine the issues that are clearly of great concern to the two honourable senators.

[Translation]

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table five delayed answers, one to a question raised by the Honourable Senator Oliver on March 28, 2001, regarding the merchant navy; one to a question raised by the Honourable Senator Andreychuk on March 28, 2001, regarding the Treasury Board; two to questions raised by the Honourable Senator Forrestall on March 14 and 28, 2001, regarding the replacement of Sea King helicopters; and one to a question raised by the Honourable Senator Kelleher on April 4 regarding the World Trade Organization.

## VETERANS AFFAIRS

### MERCHANT NAVY—EXCLUSION OF BRITISH WEST INDIAN SEAMEN FROM COMPENSATION PROGRAM

*(Response to question raised by Hon. Donald H. Oliver on March 28, 2001)*

No, all MNV special benefit applicants are treated equally.

The residence requirement for the MNV special benefit provides that the merchant navy veteran was either:

(a) a Canadian national (citizen) during service, or

(b) if domiciled in Canada or Newfoundland at the time of service, the merchant navy veteran must have continued domicile in Canada or Newfoundland after the war.

The four applicants in question appear to have been neither Canadian citizens nor domiciled in Canada at the time of their service. This qualification is not unique to the MNV special benefit.

VAC has not made a final review decision on any of these four cases yet. It is under review and we will ensure all veterans are treated fairly.

## TREASURY BOARD

### GRACE PERIOD FOR EMPLOYEES MOVING FROM PUBLIC SERVICE TO PRIVATE SECTOR

*(Response to question raised by Hon. A. Raynell Andreychuk on March 28, 2001)*

Part III of the *Conflict of Interest and Post-Employment Code for the Public Service* presents the post-employment compliance measures. These measures apply to employees in positions classified at the Senior Manager level (EX). For a period of 12 months persons formerly employed at the senior management level cannot be employed in positions related to their former responsibilities. These measures, without unduly restricting former employees in seeking employment in the private sector, are designed to minimise real, potential or apparent conflict of interest situations; to prevent obtaining preferential treatment or privileged access to government and to avoid taking personal advantage of information obtained in the course of official duties.

## NATIONAL DEFENCE

### REPLACEMENT OF SEA KING HELICOPTERS—CABINET COMMITTEE OVERSEEING PURCHASE COMPETITION

*(Response to question raised by Hon. J. Michael Forrestall on March 14, 2001)*

Ministers have always met informally, as needed, to review major Crown projects, to ensure they have all the information required to make decisions for which they are accountable to Parliament and Canadians. This is the case for the Maritime Helicopter project as well as all other major Crown projects.



Participation in any such discussion is not limited to specific ministers but determined by which ministers are interested in the topic at hand.

The Maritime Helicopter project is one of the Government of Canada's most important procurement projects. The Government is committed to taking the steps necessary to ensure we acquire a helicopter that meets the needs of the Canadian Forces, within a tight time frame and at the lowest possible cost to taxpayers.

REPLACEMENT OF SEA KING HELICOPTERS—BALLARD POWER SYSTEMS—INVOLVEMENT OF MR. PIERRE LAGUEUX AND MR. RAYMOND STURGEON

*(Response to question raised by Hon. J. Michael Forrestall on March 28, 2001)*

The Privacy Act prevents the disclosure of any further information about Mr. Lagueux and Mr. Sturgeon beyond what is already available through the Public Lobbyist Registry and other open sources.

The Public Lobbyist Registry currently reflects that Mr. Lagueux and Mr. Sturgeon are registered to act on behalf of a number of clients in various areas such as procurement, defence, science and technology and regional development. They both have Ballard Power Systems as one of their clients; they are not registered to act on behalf of Eurocopter.

As registered lobbyists, Mr. Lagueux and Mr. Sturgeon are required to comply with the full requirements of the Lobbyist Registration Act and associated regulations, including the 1997 Lobbyists' Code of Conduct.

## INTERNATIONAL TRADE

WORLD TRADE ORGANIZATION—WIN/LOSS RECORD OF GOVERNMENT IN DISPUTES

*(Response to question raised by Hon. James F. Kelleher on April 4, 2001)*

First, we would like to note that Canada is firmly committed to a rules-based system that provides a framework in which to manage international trade relations and the inevitable disputes that come up. When WTO Members undertake substantive obligations such as the ones contained in the Uruguay Round Agreements, issues concerning the application and interpretation of the rules, their scope, appropriate exceptions etc. will inevitably arise. Canada believes that the best way to resolve these issues is to follow the procedures contained in the WTO Dispute Settlement Understanding. Such a system, based on the rule of law is not only fairer, especially for small or

medium-sized countries, but it also contributes to the stability and predictability of the trading system to the benefit of all countries.

Since the WTO came into force in 1995, Canada requested the establishment of a WTO Panel to rule on seven measures maintained by other WTO Members. During the same period, other WTO Members requested the establishment of a Panel to address their complaints against eight Canadian measures. All the reports of WTO Panel and of the WTO Appellate Body are made available on the WTO website at the time they are circulated to WTO Members.

Summary of Canada's offensive cases:

**EC — French measure on scallops:** the Panel issued its confidential interim report to the disputing parties in early 1996. The report was favourable to Canada. The disputing Parties suspended the proceedings and agreed on a settlement which was notified to the Dispute Settlement Body on July 5, 1996.

**Japan — measures regarding taxes on alcoholic beverages** (joint Panel with the U.S. and the EC): the Panel and the Appellate Body concluded that the Japanese tax system as it applied to alcoholic beverages was inconsistent with Japan's obligations under the General Agreement on Tariffs and Trade (GATT). Both reports were adopted on November 1, 1996. Japan has since implemented the rulings.

**EC — ban on beef produced with growth-promoting hormones** (joint Panel with the U.S.): the Panel and the Appellate Body ruled that the EC was in violation of its obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures. The reports were adopted by the Dispute Settlement Body on February 1, 1998. As a result of the EC's failure to implement the rulings, the Dispute Settlement Body authorized Canada, on July 26, 1999, to retaliate in an amount of \$11.3 million annually. Retaliatory measures were implemented August 1999.

**Australia — ban on the importation of fresh, chilled and frozen salmon:** the Panel and the Appellate Body found the Australian measures inconsistent with Australia's obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures. The reports were adopted by the Dispute Settlement Body on November 1, 1998. On February 18, 2000, a compliance Panel found that Australia had not implemented the rulings on fresh, chilled and frozen salmon. On May 16, 2000, Canada and Australia reached an agreement that reopened the Australian market effective June 1, 2000.



**Brazil — export financing programme for aircraft:** the Panel and the Appellate Body found Brazil to be in violation of its obligations under the Agreement on Subsidies and Countervailing Measures. On May 9, 2000, a compliance Panel ruled that Brazil had not properly implemented the rulings on Proex. On August 28, 2000, a WTO Arbitrator estimated at \$344.2 million annually the amount of retaliation Canada could take against Brazil for the continued failure to implement the WTO rulings on Proex. On December 12, 2000, following the breakdown of bilateral negotiations, Canada received authority from the WTO to impose countermeasures on Brazil in response to Brazilian non-compliance. At that time Brazil announced that it had revised Proex to bring the program into compliance with its WTO obligations. On February 16, 2001, Canada requested a compliance Panel to assess the revisions to the Proex program. The process of making written and oral submissions to the Panel has been completed, and the final report of the Panel is expected in late June 2001.

**EC — French ban on asbestos:** the Panel found that the French ban on chrysotile asbestos is consistent with WTO Agreements. The report of the Panel was circulated to WTO Members on September 18, 2000. Canada appealed, on October 23, 2000, some of the conclusions of the Panel report before the WTO Appellate Body. The Appellate Body modified some of the Panel's findings but confirmed that the ban was consistent with France's WTO obligations. The reports of the Panel and Appellate Body were adopted by the WTO Dispute Settlement Body on April 5, 2001.

**U.S. — export restraints:** the WTO Panel was established on September 11, 2000 to hear Canada's complaint that the U.S. treatment of export restraints in countervailing duty investigations is contrary to U.S. obligations under the Agreement on Subsidies and Countervailing Measures. The Panel held two hearings on the matter — January 18/19 and February 21/22, 2001. The WTO Panel is expected to release its report publicly sometime in May.

Summary of Canada's defensive cases:

**Periodicals — complaint by the U.S.:** the Panel and subsequently the Appellate Body found the Canadian measures to be inconsistent with Canada's obligations under the GATT. Both reports were adopted by the Dispute Settlement Body on July 30, 1997. Canada implemented the rulings.

**Pharmaceutical patent regime — complaint by the EC:** the EC challenged two provisions of Canada's Patent Act, the early working exception and the stockpiling exception. The Panel ruled that the early working exception was consistent with Canada's obligations under the Agreement on Trade-Related Intellectual Property Rights (TRIPS) but that the stockpiling exception was not. On October 7, 2000, Canada announced that it had implemented the ruling with respect to the stockpiling exception.

**Canada's patent term — complaint by the U.S.:** the Panel found that Canada's patent term for certain pre-1989 patents is inconsistent with Canada's obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). On September 18, 2000, the Appellate Body confirmed the Panel's findings. An Arbitration Panel determined that Canada would have 10 months (until August 12, 2001) to comply with the decision. Canada is in the process of making legislative changes necessary to implement the WTO ruling.

**Automotive industry — complaints by the EC and Japan:** the Panel and Appellate Body found that key elements of the Auto Pact violated Canada's trade obligations under the GATT, the General Agreement on Trade in Services (GATS) and the Agreement on Subsidies and Countervailing Measures. The reports were adopted by the Dispute Settlement Body on June 19, 2000. Canada implemented the Panel's subsidy finding within 90 days, as recommended by the Panel. On February 18, 2001, Canada revoked the remaining Auto Pact measures. At the WTO Dispute Settlement Body meeting of March 12, 2001, Canada announced that it had complied fully with the WTO ruling.

**Dairy products — complaints by the U.S. and New Zealand:** the WTO ruled last year that Canada had violated its export subsidy obligations for dairy products. In order to comply, new dairy export mechanisms were implemented in nine provinces (Newfoundland does not export dairy products). The United States and New Zealand contend that these mechanisms are not sufficient for Canada to meet its WTO obligations. At the request of both countries, a WTO Compliance Panel has been established. A Panel decision will be issued around July 11. While the United States and New Zealand have already sought WTO authorization to retaliate should the WTO uphold their challenge, their requests have been suspended until the end of any appeal process should one be requested (late October).

**Measures affecting the export of civilian aircraft — complaint by Brazil:** the Panel and the Appellate Body found that, of the 7 programmes cited by Brazil, only 2 were found inconsistent with the Agreement on Subsidies and Countervailing Measures. The reports of the Panel and Appellate Body were adopted by the Dispute Settlement Body on August 20, 1999. On May 9, 2000, a compliance Panel found that Canada had fully implemented the rulings on the Technology Partnerships Canada programme but that minor changes were required on the Canada account support for regional aircraft. The Appellate Body upheld the compliance Panel's decision on July 21, 2000. Canada is in the process of making the required changes.

**Export Credits and Loan Guarantees for Regional Aircraft — complaint by Brazil:** on March 12, at Brazil's request, the WTO established a Panel to examine Canadian export credit programs, specifically Canada Account and EDC's Corporate Account, as well as the involvement of these programs and equity guarantees provided by Investissement Québec in the Air Wisconsin transaction. The parties are in the process of selecting a chair and members of the Panel. A ruling in this matter can be expected in late summer or early fall.

[English]

## ORDERS OF THE DAY

### CANADA BUSINESS CORPORATIONS ACT CANADA COOPERATIVES ACT

#### BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Kirby, seconded by the Honourable Senator Grafstein, for the third reading of Bill S-11, to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts.

**Hon. Donald H. Oliver:** Honourable senators, I rise today to speak briefly on third reading on the bill to amend the Canada Business Corporations Act and the Canada Cooperatives Act. You will recall that last week I spoke at length about my concerns regarding the fact that it has been 25 years since the last

major overhaul of a very important business framework law. The Minister of Finance continues to remind us that we live in a global economy. Indeed, Industry Canada noted that Canadian businesses compete in the global marketplace and will seek the corporate law and administration that most reduces their hard and soft transaction costs.

Honourable senators, we need to have enshrined in the bill a mechanism to allow for periodic reviews of the law. In the absence of any plan to regularly review the CBCA, I fear it will be yet another 25 years before the act is amended again. That would not be good for Canada, it would not be good for Canadian business and it would not be good for our national position in the global marketplace. It is my view that this bill, like many others, should be subject to periodic review and brought before both Houses of Parliament for study.

#### MOTION IN AMENDMENT

**Hon. Donald H. Oliver:** With that in mind, honourable senators, I move, seconded by the Honourable Senator David Tkachuk, that Bill S-11 be not now read the third time but that it be amended by adding, after line 38 on page 88 the following:

135.1 A committee of the Senate, of the House of Commons or of both Houses of Parliament that is designated or established for the purpose shall, within five years after the coming into force of this section, and within every ten years thereafter, undertake a review of the provisions and operations of the *Canada Business Corporations Act*, and shall, within a reasonable period thereafter, cause to be laid before each House of Parliament a report thereon.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Jeremiah S. Grafstein:** Honourable senators, I have a question. I commend the Honourable Senator Oliver for this amendment, but I was not quite clear, because we do not have the words before us, as to whether he is suggesting that the House of Commons would review it, or a committee of the Senate, or a joint committee. Is the honourable senator raising the possibility that the Senate might be excluded from that review?

**Senator Oliver:** No, I am not, honourable senators. The House of Commons and/or the Senate — and it could be the Senate or the House of Commons, but I am asking that it be laid before both Houses of Parliament. The wording is: "A committee of the Senate, of the House of Commons or of both Houses of Parliament that is designated or established..."



**Senator Grafstein:** Honourable senators, again, I agree with the principle. The other principle is that I hope we are not by this purpose excluding, as a mandatory requirement, the Senate. I am not sure on the reading of this, where it says the "House of Commons or of both houses." The amendment says: "A committee of the Senate, of the House of Commons or..." and therefore, I ask again, is Senator Oliver saying that it is either a committee of both houses, either of the Senate or of the House of Commons, or a joint committee? Is that the meaning of this?

I am getting assurance from the Leader of the Government in the Senate that it is not to exclude the Senate, it is either a joint committee or both Houses. Having said that, I agree with the Honourable Senator Oliver.

I wish, however, to state this one historical footnote: I was involved in establishing an internal committee to review the Corporations Act back in 1965 or 1966. It took over two decades for that work to be done, so I commend Senator Oliver for forcing the commercial arms of the executive to review this very important piece of corporate governance legislation on a regular basis.

**Hon. Michael Kirby:** Honourable senators, as the sponsor of the bill and on behalf of the members on this side of the house, I welcome Senator Oliver's amendment. We are delighted to give our support.

I may also say that many of the elements that are in the bill are elements that emanated from a series of hearings that the Senate Banking Committee had two or three years ago in which Senator Oliver participated extensively. I absolutely agree with him that the criticism that often befalls business legislation is that precisely because it is not politically zingy and does not attract attention it therefore does not get to the top of the government's agenda. I believe insisting, as the honourable senator has done, that this matter be dealt with on a regular, periodic and expeditious basis is a good thing, so I am happy to support the amendment.

**Hon. E. Leo Kolber:** As the chairman of the Standing Senate Committee on Banking, Trade and Commerce, I should like to commend Senator Oliver for his amendment.

• (1410)

**The Hon. the Speaker:** Honourable senators, is the house ready for the question?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion in amendment?

**Hon. Senators:** Agreed.

Motion agreed to and bill, as amended, read third time and passed.

## CANADA FOUNDATION FOR SUSTAINABLE DEVELOPMENT TECHNOLOGY BILL

### SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Sibbeston, seconded by the Honourable Senator Chalifoux, for the second reading of Bill C-4, to establish a foundation to fund sustainable development technology.

**Hon. Ethel Cochrane:** Honourable senators, I am pleased to have the opportunity to make a few remarks on Bill C-4, to establish the foundation to fund sustainable development technology. I note that this foundation will emphasize funding for new climate-friendly technologies with the potential to reduce greenhouse gas emissions and technologies to improve air quality. I support the principle of Bill C-4. Reducing greenhouse gas emissions and promoting cleaner air are important issues and certainly deserving of public support.

I am encouraged to see that the foundation will be looking outside of government for contributions to projects. The government will provide an initial investment of \$100 million and the foundation will be seeking collaborative agreements and financial investment from technology developers, suppliers and users, the business community, non-profit organizations and industrial associations. It is very appropriate that those who will benefit from technological development should assist in financing it.

Having said that, I have a number of concerns and reservations about why this foundation is being established, how it will be administered and how it will account to the taxpayers for its actions.

First and foremost, honourable senators, I am not persuaded that there is any need to create a new foundation in order to accomplish the government's stated objective of supporting and promoting new environmentally friendly technologies. The foundation is to be launched with \$100 million in funding, but why could this not be administered by the Department of Industry or by any of the many programs and government-funded agencies that are already in place? A partial list of such government-funded agencies that are already in place includes: the Federal Business Development Bank; the Program of Energy Research and Development; fellowship programs and the Network of Centres of Excellence; the Industrial Research Assistance Program; Technology Early Action Measures; Technology Partnerships Canada, with an annual allocation of \$300 million; and the Canada Foundation for Innovation, which has received or been promised a total of \$3.1 billion since it was set up in 1997. With all of this money and all of these programs already in place, what is the justification for adding another new foundation that will no doubt have significant administrative costs?



Second, there are serious issues of transparency and accountability. The foundation will not be subject to access to information, nor will it be subject to the scrutiny of the Auditor General. The directors of the foundation will appoint their own auditor who will report to them.

The Auditor General has strongly criticized the government in recent years for what he has called new governance arrangements. In the November 1999 report, "Matters of Special Importance," he wrote:

By their very nature, these arrangements challenge the traditional accountability relationship that sees Ministers answerable to Parliament for their policies and programs.

The report continues:

Ministers are never wholly responsible for them. In some cases, arrangements have been intentionally set up to be totally independent from Ministers, even though they may depend on federal funds and federal authority.

That is the Auditor General's report.

I have been keenly aware of this evasion of responsibility, as Senator Carstairs well knows, with the Millennium Scholarship Foundation Fund. The government has continually ducked questions on the administration of that foundation by saying it is an independent agency, even though it is operating with \$2.5 billion of government funds. I can foresee the same thing happening with the foundation to be established in Bill C-4.

Third, I have several concerns about the management of the foundation. There are to be 15 directors and 15 foundation members. Seven directors, including the chair, and seven members will be appointed by the government, and they will also appoint the remaining eight directors and eight members. I appreciate the attractiveness of creating 30 new jobs for good Liberals —

**Some Hon. Senators:** Oh, oh!

**Senator Cochrane:** — but do we really need 30 people to manage this fund?

**Senator Tkachuk:** If they are Liberals, you do.

**Senator Cochrane:** Is it appropriate that they will then determine how much they should be paid? The bill stipulates that appointments must be paid having regard to certain considerations, one of which is regionally balanced representation. There is a significant difference, however, between having regard to regional balance and actually adhering to it.

Finally, I have some questions about the future administration and the finances of the foundation. We have no idea how much

money the foundation will actually be administering in the future. It will begin with \$100 million, but the government may add any amount to that at any time.

Consider the Foundation for Innovation for a moment, which began in 1997 with an allocation of \$800 million. That foundation received an extra \$200 million in the 1999 budget, \$900 million in the 2000 budget, \$500 million more in last fall's pre-election spending binge, and a further \$700 million in March of this year.

• (1420)

The total was \$3.1 billion so far. That is the foundation for innovation. This gives honourable senators some idea of my concern, and of the magnitude of what we might be dealing with here.

A provision in Bill C-4 deals with the eventual dissolution of the foundation. If it is dissolved, any funds or assets are to be distributed to existing eligible project recipients. We are contemplating a gift of potentially hundreds of millions of dollars to projects which have already been paid for and which may not need additional support. Why would these funds and assets not be returned to the Consolidated Revenue Fund?

There are also provisions for the funds to be transferred to the administration by a private sector foundation at the discretion of cabinet. We must question the wisdom of handing over large sums of public funds to private sector control.

As I said earlier, in principle I am in favour of the government's objective of promoting sustainable development and tackling the problems of climate change and air quality. I support referring Bill C-4 quickly to committee, and I should like to see a detailed study done of it, but I do hope that government members will be receptive to some substantive improvements to that bill.

**The Hon. the Speaker:** Is the chamber ready for the question?

**Some Hon. Senators:** Question.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Sibbeston, bill referred to the Standing Senate Committee on Energy, the Environment and Natural Resources.

## ROYAL ASSENT BILL

## SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Kinsella, for the second reading of Bill S-13, respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament.—(*Honourable Senator Cools*).

**Hon. Anne C. Cools:** Honourable senators, I rise to speak to second reading of Bill S-13. Bill S-13 is wholly concerned with Her Majesty's Royal Prerogative, specifically her prerogative of Royal Assent. Consequently, it needs a Royal Consent for Parliament to even debate it. I said this on June 9, 1998 when this same subject-matter was contained in Bill S-15, and on December 1, 1999 when it was contained in Bill S-7, at which time I even tried to amend the second reading motion asking that it not be read the second time until its sponsor had fulfilled the proper, prescribed parliamentary procedure and obtained the Royal Consent preliminary to second reading.

Today I assert again that Bill S-13 requires the Royal Consent preliminary to second reading. This is the prescribed procedure laid down by the two fundamental laws, the law of parliament, the *lex parliamenti*, and the law of prerogative, the *lex praerogativa*. The authorities and parliamentary jurisprudence dictate thus. I shall cite them. First, there is Beauchesne. *Beauchesne's Rules & Forms of the House of Commons of Canada*, 6<sup>th</sup> Edition, paragraph 727.(1) states:

727.(1) The consent of the Crown is always necessary in matters involving the prerogatives of the Crown. This consent may be given at any stage of a bill before final passage; though in the House it is generally signified on the motion for second reading. This consent may be given by a special message or by a verbal statement by a Minister, the latter being the usual procedure in such cases. It will also be seen that a bill may be permitted to proceed to the very last stage without receiving the consent of the Crown but if it is not given at the last stage, the Speaker will refuse to put the question. It is also stated that if the consent be withheld, the Speaker has no alternative open except to withdraw the measure.

Honourable senators, on several occasions many senators have raised the question of the need for Royal Consent to this class of bills, bills that touch the interests of the sovereign. Her Majesty, Queen Elizabeth II. Last June 2000, when the Senate debated the Clarity Bill, Bill C-20, some of us raised this very question, asserting that Bill C-20 required the Royal Consent. On June 20,

2000, we spoke to a point of order. We were right. Bill C-20 required the Royal Consent. Some days later, Senator Bernard Boudreau, Leader of the Government in the Senate, gave it. On June 29, 2000, Senator Boudreau announced the Royal Consent saying:

Honourable senators, I have the honour to advise this house that Her Excellency the Governor General is pleased, in the Queen's name, to give consent, to the degree to which it may affect the prerogatives of Her Majesty, to the consideration by Parliament of a bill entitled 'An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference'.

This adds much weight to my assertions that Bill S-13, solely and wholly concerned with the Royal Prerogative, requires the Royal Consent, which means Her Majesty's approval of Parliament's consideration and debate of her interest in this bill, being her prerogative of Royal Assent to bills, and Her Majesty's parliamentary role as the Queen in Parliament. I absolutely insist that this bill needs the involvement, consent and approval of Her Excellency, Governor General Adrienne Clarkson, prior to its introduction and debate here.

Honourable senators, we are told that this Bill S-13 is fundamentally similar to the United Kingdom's 1967 changes to the royal assent procedure, that is, their Royal Assent Act 1967. Previously, on February 22, 2000, in debate on Bill S-7, I had pointed out that, in that United Kingdom instance, the Royal Consent was obtained from Her Majesty prior to the bill's second reading. Again I shall restate these facts. That United Kingdom Royal Assent Act had originated in the House of Lords. There the Royal Consent had been announced by the Lord Chancellor. On March 2, 1967, before second reading, the Lord Chancellor, Lord Gardiner, announced it, saying:

My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the Royal Assent Bill, has consented to place Her prerogative and interest, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Having done this, the Lord Chancellor then moved second reading of that bill. Weeks later, on April 17, 1967, the Attorney General, Sir Elwyn Jones, did the same in the House of Commons, saying:

I have it in Command from the Queen to acquaint the House that Her Majesty, having been informed of the purport of the Bill, has consented to place Her prerogative and interest, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.



It is uncontroverted that Her Majesty's consent is required for this Bill S-13 which touches her prerogative and interests in the form and procedure of giving Royal Assent, that critical constitutional act which gives bills the force of law and transforms bills into acts of Parliament.

Honourable senators, on December 14, 1999, in ruling on Senator John Lynch-Staunton's point of order on my proposed amendment to Bill S-7, the Senate Speaker, the late Senator Gildas Molgat, said the following:

It is now necessary to address the more substantive question concerning the possible need to signify Royal Consent.

As Senator Cools stated in her intervention, Royal Consent is required whenever a bill proposes to affect either the prerogative of the Crown, its hereditary revenues, personal property or interests. With respect to this case, there is no doubt that the only issue involved with Bill S-7 is that of the Royal Prerogative.

Clearly the bill affected the Royal Prerogative. Senator Molgat continued:

I would suggest, however, that, if this bill receives second reading, the issue of Royal Consent be studied by the committee to which it is referred as part of its examination.

I have reviewed the proceedings of the Standing Senate Committee on Privileges, Standing Rules and Orders and have found no study of this question. Further I could find no mention whatsoever of the points that I raised in that debate. It is as though the committee had no knowledge of my points, questions or speeches. However, now, a year later, the situation has changed dramatically. Circumstances and events around last year's Clarity Bill, Bill C-20, overtook that committee's study because of the evidence placed before the Senate about the requirements for Royal Consent and the Royal Prerogative. Again I shall say that this bill needs the agreement of Her Excellency Governor General Adrienne Clarkson prior to its introduction and debate here.

• (1430)

Honourable senators, I move now to private members obtaining Royal Consent for their bills, because Bill S-13 is a private member's bill. It is Senator Lynch-Staunton's bill. As was shown by Senator Bernard Boudreau, the Royal Consent must be announced in this chamber by a minister, a member of the Privy Council. That is one of the reasons that the Leader of the Government in the Senate must be a minister and Privy Councillor. The process of obtaining the Royal Consent by a private member is different from obtaining that consent by the ministry. A private member can only obtain the royal consent by

an address, that is, by moving a motion for an address to Her Majesty, or to Her Majesty's representative, praying for her approval, her Royal Consent, to place the issue before Parliament. The private member's first step is to ask the Senate and its members to agree to seek the Governor General's approval. Second, the Governor General must then agree to the address. The authorities Todd, Beauchesne, and Bourinot tell us this about the address. Alpheus Todd's 1892 edition of his *Parliamentary Government in England* states:

But where a public bill of this description is proposed to be initiated by a private member, and not upon the responsibility of ministers, the House ought to address the crown for leave to proceed thereon, before the introduction of the same:...

Beauchesne's, sixth edition, paragraph 728, states:

In any case where a private Member wishes to obtain the consent of the Crown, the Member may ask the House to agree to an Address for leave to proceed thereon before the introduction of the bill.

Sir John George Bourinot's *Parliamentary Procedure and Practice in the Dominion of Canada*, fourth edition, 1916, stated the same:

In any case where a private member wishes to obtain the consent of the Crown, he may ask the house to agree to an address for leave to proceed thereon, before the introduction of the bill. The consent should be properly given before the committal of the bill,...

These three are unanimous that the law of Parliament, the *lex parliamenti*, prescribes the parliamentary procedure that private members must move a motion to secure this house's agreement to obtain leave of the Governor General to proceed. Honourable senators, every senator has a right to debate and vote on asking the Governor General to agree. Any attempt to deprive any senator of that right is a breach of privileges and a breach of the law of Parliament. The process for determining the need for Royal Consent is the debate on the motion for the address itself, a parliamentary fact that seems to elude many.

Honourable senators, this bill's sponsor is not only a private member, but is in opposition. For opposition members seeking the Royal Consent, the parliamentary procedure of a motion for an address to Her Majesty becomes more compelling; it becomes absolute. The two most famous precedents on the opposition, both in the United Kingdom, are that of William Ewart Gladstone in 1868 in the House of Commons and Lord Lansdowne in 1911 in the House of Lords.

First, on May 7, 1868, William Gladstone, while in opposition moved an address for the Royal Consent, said:



...in this instance, the case is different. The interest of the Crown in this case is not merely a proprietary interest, but one of wide and far-reaching import; and also this is a Bill which, although it is not proposed by the Government, would be, I may say, proposed on behalf of a very large proportion of the Members of this House, acting together generally in its support. Now, that being so, I have felt, with the advice and concurrence of others, that it was my duty not to claim the entire liberty which the House has accorded to its Members; but to ask the House to present an address requesting the Assent of the Crown, and allowing us to deliberate upon this subject before any Motion be made in the House for the introduction of the Bill.

This is the eminent former Liberal Prime Minister of England, William Gladstone, speaking. He was Leader of the Opposition at the time.

The House must debate the matter prior to the bill. The other famous precedent was by Lord Lansdowne, an eminent constitutionalist, once a Governor General of Canada. On March 30, 1911, Lord Lansdowne in opposition in the House of Lords said:

...it is certainly a breach of the law of Parliament to pass through either House a bill affecting the Prerogative of the Crown without the assent of the Crown. I do not think any one will dispute that. We also conclude from these precedents that, although this assent may be signified at any stage, it is the proper course to obtain it before the introduction of the Bill. But we draw this further conclusion in reference to cases where the Bill is introduced, or is sought to be introduced, not by the Government, but by the Opposition. The case of the introduction of such a Bill by the Opposition is clearly a different case from the introduction of a similar Bill by the Government, because it is perfectly fair to assume that if the Government makes itself responsible for the Bill it can at any moment count upon the assent of the Crown. That, of course, is not true when the Bill is moved from the Opposition side of the House, ...

Honourable senators, let us remember that Lord Lansdowne was one of the great parliamentarians of the century. Lord Lansdowne continued:

We therefore draw the conclusion that if a Bill affecting the Royal Prerogative is brought forward by the Opposition it is indispensable that the Royal Assent should be signified before the Bill has been actually introduced, and, my Lords, that is the course which we propose, with the permission of the House, to adopt this evening.

Honourable senators, learned parliamentarians Lord Lansdowne and Mr. Gladstone were both Leaders of the Opposition when they had described the proper parliamentary procedure prescribed for opposition members. The principle is obviously that changes of such moment should only proceed

either at the initiative of responsible ministers of the Crown with access to Her Majesty, or by the expression of the judgement and will of the whole house to ask Her Majesty. Senator Lynch-Staunton simply must seek and obtain the will of this Senate on the question of seeking Her Majesty's leave through the Governor General to deliberate this bill. To do otherwise is to breach the law of Parliament, the privileges of Parliament, and to breach the law of the prerogative. These two systems of law rely on each other for their maintenance, defence, and protection. Senators have a duty to ensure that Her Excellency, Governor General Adrienne Clarkson's agreement is sought and obtained prior to second reading in this chamber. It is proper, respectful, and necessary.

Honourable senators, I shall now quote the November 6, 1985 report of the Standing Committee on Standing Rules and Orders. That report proposed three recommendations about the Royal Assent. Recommendations 1 and 2 recommended substantive changes to the Royal Assent procedure itself, some of which are actually in Bill S-13. However, recommendation 3 was about the parliamentary procedure necessary to obtain the Governor General's approval of the proposed changes as the precondition to actual proposed changes as in this bill.

Recommendation 3 stated:

That representatives of the Senate meet with representatives of the House of Commons to draft a resolution for a joint Address of both Houses to be presented to Her Excellency the Governor General praying that she approve such changes to the Royal Assent ceremony as described in this Report.

Honourable senators, once again I say that that is the process that should be performed and conducted prior to the bill and prior to the consideration of the substantive questions themselves.

The Senate and the bill's sponsor, Senator Lynch-Staunton, have a duty to proceed with proper and due regard to these vital parliamentary and constitutional principles, with due regard to Parliament's law and with the respect and allegiance due to Her Majesty and her representative in Canada, Her Excellency, the Right Honourable Adrienne Clarkson.

● (1440)

Honourable senators, the Senate owes Her Excellency the Right Honourable Adrienne Clarkson the proper respect and dignity. Her Majesty's representative should receive no less from this chamber.

I thank Senator Lynch-Staunton for his initiative, and I would urge him again to move an address so that all honourable senators may debate the question Royal Consent. It is my intention not to vote on this bill until I receive an indication that Governor General Adrienne Clarkson is involved in some way or other in this pressing matter of Royal Assent in Canada.

**The Hon. the Speaker:** Honourable senators, before Senator Lynch-Staunton speaks, he may wish to raise a point of order. If the honourable senator speaks, I am obliged to give notice to other honourable senators that his speech will close the debate.

**Hon. Jeremiah S. Grafstein:** Honourable senators, I have a question and I do not intend to speak or to take the adjournment. I am not clear about Senator Cools' suggestion. Is the honourable senator suggesting that because Royal Assent is a pre-condition to debate, the bill is out of order and, therefore, we should seek, in new circumstances, a decision from the Speaker to confirm her view?

**Senator Cools:** Honourable senators, I thank Senator Grafstein for his question, which is important. I thought long and hard about whether to raise this as a point of order, and I believe that it is a question that concerns the entire Senate.

I said, essentially, that the process for obtaining Royal Consent is twofold. One process is to obtain Royal Assent from Her Majesty's representative by virtue of the ready access of the cabinet —

**The Hon. the Speaker:** Honourable senators, the allotted time for Senator Cools has expired. Senator Cools, do you request leave to continue?

**Senator Cools:** Honourable senators, I request leave to continue.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

**Senator Cools:** There are two ways to obtain Royal Consent. One way is through a member of the Privy Council who approaches Her Majesty and then stands on the floor of the chamber to announce the Royal Consent. The other way is to move an address. "Address" is the term used for "parliamentary conversation with the sovereign." The proper way for a private member to obtain the Royal Consent is by virtue of a motion for address.

Honourable senators, in respect of the second point raised by Senator Grafstein, the point of order was essentially about the decision, or the judgment, on whether a Royal Consent is required, is determined in the process of the debate on the address. The authorities and parliamentary jurisprudence tell us this. This is the proper way to proceed. I examined the three sets of precedents in England that occurred on three separate occasions of debate on this matter. One occurred in 1868, with Mr. Gladstone; the next one occurred in 1911, around the Lord Lansdowne speech, and a third occurred in the 1930s, which I did not raise today.

Honourable senators, the fact is that the opposition is not believed in a parliamentary process to have ready access to Her

Majesty. Therefore, it is incumbent upon an opposition member, when he or she is moving private member's bills that touch on the Royal Prerogative, to seek the agreement and the judgment of the entire chamber. It is a matter on which each and every one of us should have an opinion. Each of us should be able to express that opinion. The precedents exist and they speak for themselves.

**Senator Grafstein:** Honourable senators, I will not belabour this issue, but Senator Cools has made it more difficult for those of us, as we listened to the argument, to decide whether we are able to vote on second reading if, in fact, it offends the prerogative of the Governor General.

**Senator Cools:** It does.

**Senator Grafstein:** If it does, and we do not have a clear-cut ruling, it will be difficult to decide. I see that Senator Lynch-Staunton is not prepared to accede to your argument, honourable senator, or to seek that consent. I have not heard him stand and say that he intends to do that. Therefore, it puts us in a much more difficult position to determine whether, in acceding to second reading, the Governor General's prerogative has been interfered with.

Honourable senators, would it not be better, in the circumstances, to seek His Honour the Speaker's advice? If we disagree with that advice, each senator may stand and express that opinion. Otherwise, we are in a position to decide individually whether we agree with the argument. We cannot even get at the substance of the bill, and Senator Lynch-Staunton knows that I have some problems with that.

**Senator Cools:** Senator Grafstein, I said clearly that I, personally, will not vote at second reading on this bill because I believe that the chamber, as a whole, should not take such a vote in the absence of an indication from the Governor General. That is my personal position and solution.

Honourable senators, I believe that this bill is contrary to, or at least not consistent with, the law of Parliament. I am aware that there are many who no longer know what I mean, or what we mean when we say "the law of Parliament." For example, it is said that a bill should have three readings, and yet it is written nowhere in any statute in the land that a bill should have three readings. It is a question of the law of Parliament. The law of Parliament and the parliamentary jurisprudence, for some centuries now, has always insisted that an address, in the instance of a private member, is absolutely necessary before a bill should be introduced. That is what I have said. That parliamentary jurisprudence becomes more compelling in the instance of a bill at the initiative of the opposition. The opposition is not believed to have ready access to Her Majesty.

Honourable senators, I did not raise a point of order for particular reasons. On several occasions in this chamber, we have raised the need for Royal Consent. The question has never been answered. I have received no indication that it would be answered in this particular instance.



Last June, some of us spoke in that debate on that question. Senator Joyal raised the question on a point of order as to whether a Royal Consent was required. That question was never answered. The then Speaker of the House, Senator Molgat, took the question under advisement, but never answered the question. Some days later, Senator Boudreau rose in his place, announced that the Royal Consent had been obtained and that it was in hand. The honourable senator read the Royal Consent into the record of the chamber. At that point, His Honour the Speaker rose and said that there was no need for him to rule. It would have been my preference at that time to hear the ruling, because it seemed to me that the chamber had asked him for such a ruling. It would have been good to receive the ruling.

• (1450)

All I am saying is that if you wish to raise a point of order, be my guest. As a matter of fact, I would be happy to support you in it. I have raised the same issue on countless occasions and have received no answer.

**Senator Grafstein:** Honourable senators, I will take the adjournment of the debate on this motion.

However, I say in passing that I do not think the honourable senator is correct. It is my belief, and Senator Joyal is here to confirm it, that Royal Assent was indeed obtained on or before third reading of the Clarity Bill. That is my understanding. That is why we satisfied ourselves that people voted on that particular bill after they were satisfied that Royal Assent was indeed assented.

To suggest, honourable senators, that the Royal Assent was not obtained on that bill is wrong. It was indeed assented to.

**Senator Cools:** I did not say that.

**Senator Grafstein:** That is what I heard the honourable senator say.

Having said that, honourable senators, I will take the adjournment.

**Hon. Peter A. Stollery:** Honourable senators, I rise on a point of order.

**Senator Cools:** Could I answer the question first?

**The Hon. the Speaker:** If a point of order is raised, it is my obligation to hear the point of order.

Senator Stollery, do you have a point of order?

**Senator Stollery:** Yes, honourable senators, I do. My point of order is this. It seems to me that an argument between two senators is not an appropriate way to maintain order in the

chamber. If senators want to make speeches on subjects, that is the appropriate way to run an orderly chamber. I do not think this is an orderly way for us to do our business.

If senators have points to make, they should make them in the course of their speeches. However, do I not think it is appropriate to have long arguments between senators.

**The Hon. the Speaker:** Honourable senators, the rules provide for questions or comments by a senator other than the senator who spoke on a bill, which is the case with Senator Cools' comments on Senator Lynch-Staunton's Bill S-13. Within the time allowed there can be questions put or comments made by another senator. Of course, the senator does not have to take the question. However, the rules are blurred when it comes to the making of comments in terms of whether the senator is making a comment or making a speech. I will take from Senator Stollery's point of order that I should be more vigilant in clarifying whether or not Senator Grafstein, who had an exchange with Senator Cools, was making a speech or a comment. In the normal course, comments would be relatively brief.

In any event, I understand that the Honourable Senator Grafstein wishes to make a motion.

**Senator Cools:** No. I was answering —

**Senator Grafstein:** Honourable senators, I move the adjournment of the debate.

**The Hon. the Speaker:** I have received a request from Senator Cools to answer a question that the honourable senator put to her. I believe I should recognize her to answer a question that has been put to her.

**Senator Cools:** Honourable senators, I should like to make something quite clear to Senator Grafstein. Perhaps he did not hear everything I said, or perhaps I was not clear enough. I said in the text of my speech that we raised a point of order, and that we were clearly right. Senator Boudreau rose to his feet here in his place on June 29 and read the Royal Consent into the record. What I said was that the question was never answered by the Speaker.

If the record were to be examined, honourable senators would see that immediately following the signification by the minister, Senator Boudreau, the Speaker of the Senate, Senator Molgat, rose and said that there was no need for him to rule on the point of order that had been raised. There are two different issues. The fact is that on the substance of the matter we were absolutely right. We said a Royal Consent was needed and the Privy Council, in the person of Senator Boudreau, gave the Royal Consent. The fact remains that the question was never answered by the Speaker of the Senate as to whether Royal Consent was required.



I wish to put this on the record so that there is no question about how mistaken any of us may be and so that it will be perfectly clear for all to read. I wish to read from the *Debates of the Senate* for Thursday, June 29, 2000, page 1896. The title on that page states, "Royal Consent," and then the Honourable Senator Boudreau, who was Leader of the Government at that time, spoke and said exactly what I quoted him saying. After that, the Speaker rose and said:

Honourable senators, in light of the statement by the minister, which is the proper course of action in that if such a statement is to be made it must be made by a minister, it is unnecessary for me to proceed with my ruling because Royal Consent has been given.

The point I was making was that, yes, we raised a question of order; and, yes, the government took the point from us and took us seriously. The government obtained the Royal Consent and brought it before the chamber.

However, the question that was raised in the point of order and given to the Speaker to answer has never been answered by the Speaker. I put on the record the fact that the Speaker said that it was unnecessary. That is the record. I hope that satisfies Senator Grafstein.

**The Hon. the Speaker:** Two senators have risen to speak. They are Senators Bolduc and Lynch-Staunton. In the case of Senator Lynch-Staunton, unless this debate is adjourned, if he were to speak it would end the debate. Thus, I will recognize first Senator Bolduc.

[Translation]

**Hon. Roch Bolduc:** Honourable senators, I should like to raise a point of order. We have a rule and it is clear. Honourable senators speak for a period of 15 minutes, and then the Speaker asks for leave of the Senate for the honourable senator to continue. I always understood this to mean that —

[English]

— in a gentlemanly manner, we will give another five minutes. Now, however, over the course of the last few days, we are going on from half an hour to one hour. It seems to me that that is not reasonable for the other senators here.

[Translation]

I would suggest, if the *Rules of the Senate* need changing, that they be changed. Let us say that a senator speaks for 15 minutes and then, when his time is up, leave is granted for him to continue for another 5 or 10 minutes. Fine, but there has to be a limit! There are 100 senators at present, so if everyone decided to speak for an hour, that would really add up! This is a part-time job for us, not a full-time one!

[English]

**The Hon. the Speaker:** Honourable senators, to some degree this is an extension of Senator Stollery's point. I will take it as a matter of order.

Our rules provide for time limits. However, when we give leave to extend the time, unless there is a limitation, the time is essentially unlimited. Accordingly, I do not believe there is any lack of order in this exchange, in that the rules are suspended in terms of this particular exchange, because no time limit has been put by any senator on the additional time that will be taken for additional remarks, questions or comments.

Senator Lynch-Staunton is asking for the floor.

**Senator Stollery:** Honourable senators, I want to briefly recall for honourable senators the fact that debates are supposed to take place in committees. We have our rules. We can make speeches in the Senate on bills and all kinds of various other things. However, debate on the details of matters is to take place in committees. It costs a lot of money to keep the Senate sitting here for items that should be properly dealt with in committees.

**Senator Cools:** Honourable senators, I rise on a point of order.

**The Hon. the Speaker:** Senator Cools, are you answering a question?

**Senator Cools:** No, I am rising on a point of order.

**The Hon. the Speaker:** I recognize Senator Cools on a point of order.

**Senator Cools:** The point of order about the debate in the chamber can be succinctly put. First, there is supposed to be debate in the chamber. I take issue with Senator Stollery's point of order. If the substance of the debate is whether a matter should go to committee or whether a question should be voted on prior to referring it to committee, the language of the jurisprudence clearly states that Royal Consent should be given before the bill is committed. It is absolutely absurd, if not ridiculous, for anyone to assert that the debate on the issue should take place in the committee, when in point of fact the question is whether the bill should even be referred to committee.

• (1500)

I wanted to make that point, honourable senators. I do not know how His Honour will resolve questions of order of this type. If ever there was a point of order, it was as to the appropriate moment for a debate to take place on whether a question should be referred to committee. I would submit that the issues that I was raising could not be discussed in committee.

**The Hon. the Speaker:** Honourable senators, time is passing and frustrations are being expressed. I think we have come to the point where what is transpiring here is a debate, and not a discussion of matters of order.

I have not called on Senator Lynch-Staunton because if I do, then he would be the last speaker on this matter. I have an indication from Senator Gauthier that he wishes to adjourn the debate. I believe I should recognize him and then we can vote on his request to adjourn the debate.

**Hon. Jean-Robert Gauthier:** Honourable senators, I move the adjournment of the debate.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, pursuant to rule 33, I move that Senator Lynch-Staunton do now be heard.

**Hon. Marcel Prud'homme:** Honourable senators, a point of order is certainly in order at this time.

**The Hon. the Speaker:** I am sorry, Senator Prud'homme, but a motion of this type is not debatable. A motion to adjourn the debate moves closure of a debate. I must put the question.

Honourable senators, it is moved by the Honourable Senator Kinsella, seconded by the Honourable Senator Bolduc, that with respect to debate on Bill S-13, Senator Lynch-Staunton be recognized now.

Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Will those honourable senators in favour of the motion please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those honourable senators opposed to the motion please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the "yeas" have it.

**Sensor Cools:** On division.

**The Hon. the Speaker:** On division.

If the Honourable Senator Lynch-Staunton speaks now, his speech will have the effect of closing debate on second reading.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I do not think that the Royal Prerogative is being trespassed on at all. The current form of Royal Assent remains. All the bill does is add an alternative, which is not compulsory; on the contrary, it is voluntary. I do not think that the approval of Her Majesty or the Governor General is necessary. I think as a courtesy that the Governor General should be advised and even asked for her opinion, but I do not think that her approval is necessary.

Royal Assent by itself is not affected; the procedure as we know it is not affected. We are simply adding an alternative.

Honourable senators, I believe that all of the arguments put forward by Senator Cools and other senators should be debated before the committee. An expert can be called to testify, and the committee can make a recommendation accordingly to the chamber when it comes time to report the bill.

Honourable senators, I would be most pleased to refer Bill S-13 to committee when the time is appropriate.

**The Hon. the Speaker:** It was moved by the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Kinsella, that this bill be read the second time.

Is it your pleasure, honourable senators, to adopt the motion?

**Sensor Cools:** On division.

**The Hon. the Speaker:** On division.

Motion agreed to and bill read second time, on division.

#### REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I move that Bill S-13 be referred to the Standing Committee on Privileges, Standing Rules and Orders.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Agreed.

**Sensor Cools:** On division.

Motion agreed to, on division.

#### CONFERENCE OF MENNONITES IN CANADA

##### PRIVATE BILL TO AMEND ACT OF INCORPORATION— THIRD READING

**Hon. Richard H. Kroft** moved third reading of Bill S-25, to amend the Act of incorporation of the Conference of Mennonites in Canada.—(*Honourable Senator Robichaud, P.C.*).

**Hon. Eymard G. Corbin:** Honourable senators, on a point of order, what happened to this bill yesterday? We were debating this bill yesterday afternoon when His Honour called the Committee of the Whole. Discussion on the bill at that stage stopped dead in its tracks. I do not think that even a motion was put. Where does this bill stand at the moment?



**The Hon. the Speaker:** The honourable senator's memory is good. Yesterday afternoon, the house, in Senator Corbin's absence — although it was noted that Senator Corbin wished to speak to this bill — expressed its will that the question be put. The house is the master of its business, so the question was put and second reading was given to the bill. We are now at third reading stage. The observation was made that Senator Corbin would perhaps speak at third reading.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I believe that yesterday we discussed the report the Standing Senate Committee on Legal and Constitutional Affairs presented on April 26, 2001. We adopted the report yesterday. The Honourable the Speaker then asked: "When shall this bill be read the third time?" And we said: "At the next sitting of the Senate." We are now at that stage.

[English]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** For greater clarification, honourable senators, we were at report stage yesterday regarding a report with an amendment. I think the house adopted the report with the amendment, knowing full well that today we would be at third reading. Many of us did take note of Senator Corbin's desire to speak to this matter. We knew that he would have this opportunity at third reading.

**The Hon. the Speaker:** Honourable senators, it is moved by the Honourable Senator Kroft, seconded by the Honourable Senator Losier-Cool, that the Bill S-25 be read the third time now.

Is it your pleasure, honourable senators, to adopt the motion?

**Senator Corbin:** Honourable senators, it is with some trepidation and fear that I rise to speak to this bill today. I have no objection to the report having been adopted because the comments that I wished to make will not be obnoxious in any way. Indeed, I have no objection to the bill, but I wish to place on the record one or two comments. They arise from Senator Kinsella's comments at second reading stage. Indeed, Senator Kinsella at the time said that the other side would not oppose the bill. Then he said that "some of us think that there should be an administrative process to deal with matters of this kind."

Matters of this kind refer to "corporations sole," which is what this bill is all about. Senator Kinsella also referred to the historical record. Some of us in this house and colleagues who have since departed — the one senator who comes readily to mind is the Honourable Jacques Flynn — thought that the Senate should not be harnessed with bills of this kind in the future. Indeed, reform of the Canadian Corporations Act, which, as our honourable colleague Senator Grafstein indicated today, took some 10 or 20 years to complete, did not go as far as providing for incorporation of corporations sole. In the past, senators have objected.

• (1510)

I do not object to the current bill because it is an amendment to an incorporation which Parliament enacted in 1947, as I did not object in the past to amendments to other corporations sole incorporated by the Parliament of Canada in a more distant past; indeed at a time when some of the Western Canadian provinces were not part of Canada and the federal government was indeed, as was the federal Parliament, charged with the obligation to proceed with incorporation when requests were made. That was the case with Catholic as well as Anglican bishops of the northern territories, some of which have now become the provinces of Manitoba, Saskatchewan and Alberta.

This house, at the time of the Mulroney government, as well as at the time, I believe, of the first Chrétien government, indicated that it wished the government to complete its revision of incorporation laws of Canada so as to deal with the matter of corporations sole. This was clearly uttered and generally supported by senators in this house. The government has not yet moved. This house has business to attend to other than matters of incorporation. Indeed, in a democratic country and system such as ours, everyone should follow the same route for incorporation. It should be an administrative process, not a parliamentary process. I reiterate the request that the government proceed with the rest of the reform of the incorporation process in Canada.

**The Hon. the Speaker:** It is moved by the Honourable Senator Kroft, seconded by the Honourable Senator Losier-Cool, that the bill be read the third time now.

Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read third time and passed.

## STUDY ON EMERGING DEVELOPMENTS IN RUSSIA AND UKRAINE

BUDGET—REPORT OF FOREIGN AFFAIRS  
COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Foreign Affairs (budget-special study on Russia and Ukraine) presented in the Senate on April 25, 2001.—(Honourable Senator Stollery).

**Hon. Peter A. Stollery:** Honourable senators, I move the adoption of the second report of the Standing Senate Committee on Foreign Affairs.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, if it is the intention of the Chairman of the Foreign Affairs Committee to speak to the report, I will yield to him. If it is not, I wish to speak to it.



Honourable senators, in order for us to be absolutely clear on what we are doing here, it may be helpful to open your *Journals of the Senate* dated Wednesday, April 25, because it is in that issue that we have, in written form, the second report of the Standing Senate Committee on Foreign Affairs which contains an appendix. In fact, there are two appendices. The first appendix, as I understand it, is an outline of the budget that the Standing Senate Committee on Foreign Affairs prepared to meet the cost of its study authorized by the Senate, namely, to look at:

...the emerging political, social, economic and security developments in Russia and Ukraine, Canada's policy and interests in the region; and other related matters.

The sum total of the budget that was prepared by the committee is \$298,970. Also attached and published in the *Journals of the Senate* and headed "Appendix (B) To The Report," dated Thursday, April 5, 2001, is an appendix which speaks to a report from the Standing Committee on Internal Economy, Budgets and Administration. The Committee on Internal Economy is approving \$62,340.

The question is: What would we be approving were we to adopt the motion that has been moved by the Honourable Senator Stollery, Chairman of the Foreign Affairs Committee? Are we approving the entire budget of \$290,000, or are we simply approving the \$62,000 which has been approved by the Standing Committee on Internal Economy, Budgets and Administration?

This is a new procedure that we are following, and therefore we should place on the record what I believe to be the case, namely, that by adopting this motion moved by Senator Stollery, we are approving the expenditures approved by the Committee on Internal Economy of \$62,000, which I think deals with expenses to be incurred on part of the study which relates to a visit to Washington.

**Senator Stollery:** Honourable senators, Senator Kinsella is absolutely correct. If the Senate approves the portion of the report in Appendix "A", it will be approving the portion allotted for travel to Washington that was approved by the Internal Economy Committee and nothing more. The next stage of this process must go back to the Standing Committee on Internal Economy, Budgets and Administration for approval.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I find that a very awkward procedure. I am sorry that the Chairman of the Internal Economy Committee is not here to explain it. Either we approve a committee's project and a total budget, giving it the discretion to spend it wisely, or we do not. As I understand it, we have the total budget before us, yet it will be allocated through an eye-dropper. Every time the committee wants to continue further with its study, it will have to go back to the Committee on Internal Economy for additional funds.

Why would we suddenly change the procedure? If the budget is valid, we should approve it. If the Committee on Internal Economy has questions about the budget, it should stipulate that it is only allocating a fraction of the budget initially. Once the trip to Washington has taken place, the committee will want to carry on with the second phase of its study. It will have to go back to Internal Economy, and Internal Economy may say that the Foreign Affairs Committee cannot have more money. That could happen.

On behalf of all committees I argue that if we approve the terms of reference, we are obliged to approve the budget to carry out those terms of reference, and that the Standing Committee on Internal Economy, Budgets and Administration has an obligation to ensure that those funds are available.

• (11520)

We are proceeding now on a contradictory two-step basis: We approve the budget, yet we do not because the money is not available. The money is to be made available at the discretion of the Internal Economy Committee with the approval of the chamber here.

I do not know how anxious Senator Stollery is to have this approved. Perhaps he will insist on going through this awkward procedure now. I would hope that the next time this matter arises we will would have a clearer process than this awkward procedure.

There is another committee in the same situation. The Standing Committee on Social Affairs, Science and Technology has a similar budget for a study on health. The budget amount is five figures or six figures, I have forgotten. Again, only a fraction of the request was allocated for immediate need.

Honourable senators, I do not think that that is the way in which we should be operating here. Either the committees do their job with full approval and full budget, or they do not do their job.

**Senator Stollery:** Honourable senators, there is certainly substance in Senator Lynch-Staunton's comments. As matters stand at the moment, it is important that the committee proceed in this way as it is the way in which we were instructed to proceed. I am not complaining.

I would hope that the Senate would allow us to proceed by approving this item. Therefore, I move the adoption of the report.

**The Hon. the Speaker:** I have put the motion and Senator Stollery has just moved the motion again. It is my duty to put the question so that the vote can be taken. However, two honourable senators have risen requesting an opportunity to either speak or put a question to Senator Stollery. I see Senator Bryden first.

**Hon. John G. Bryden:** Honourable senators, I will ask a question. I believe that we are following a rule that deals with the Procedural Guidelines for the Financial Operation of Senate Committees. It appears that reference, as is required by the rules, was made to the Standing Committee on Internal Economy, Budgets and Administration by the Standing Senate Committee on Foreign Affairs. Presumably, as under paragraphs 2:04 and 2:05, Internal Economy has given a report to the Chairman of the Standing Senate Committee on Foreign Affairs, and the chairman is now asking for that to be approved here.

Paragraph 2:06 reads:

A committee that has received a report from the Standing Committee on Internal Economy, Budgets and Administration, pursuant to guideline 2:05 may present a report to the Senate requesting the authorization that the committee requires to incur the special expenses that it anticipates.

Presumably, "the special expenses that it anticipates" are the special expenses to do the study in relation to Russia and Ukraine. If the committee is complying with the rules, it seems that Internal Economy would have approved that larger amount and that we are being asked to approve that now. However, it appears that we are being asked to approve only a portion.

If that is the case, why is the larger amount included?

**Senator Lynch-Staunton:** Honourable senators, I will give the answer to that, if I may.

We did approve the larger amount on March 1, 2001 according to a careful reading of the *Journals of the Senate*. According to the *Journals of the Senate* of Thursday, March 1, 2001, Honourable Senator Stollery moved, and the total budget of \$298,970 was voted. Is that correct?

In any event, we need some explanation on this matter. Was the committee's budget approved or not, in total, on March 1, 2001. According to the *Journals of the Senate*, the budget was approved.

**Senator Stollery:** Honourable senators, I cannot recall what happened on March 1, 2001, but I know that our total budget of \$298,000 was not approved on March 1, 2001. I am not asking for it to be approved today.

I am following the procedures of the Senate in every detail. We are asking for the portion that we have talked about to be approved today, and not \$298,000, because that has not been approved by Internal Economy.

Honourable senators, I have nothing further to add. I think that everything is in order.

I would also point out to honourable senators that the Standing Senate Committee on Foreign Affairs is once again trying to

have a meeting when the Senate rises. We have witnesses from the Canadian Ukrainian community so the quicker we get out of here, the better for us.

**Hon. Roch Bolduc:** Honourable senators, I suspect that the chairman of the committee followed the instruction of the Internal Economy, Budgets, and Administration Committee. Perhaps they asked him to request only the amount required for the next month or for a certain time frame. Perhaps at a later date, they will seek approval for the remaining amount.

I am not sure that this is the best procedure, but apparently this is the one that is used by the Standing Committee on Internal Economy, Budgets and Administration.

**Hon. C. William Doody:** Honourable senators, I might be able to add a word of explanation to this situation. I sit on the subcommittee of that Internal Economy Committee. The subcommittee deals with the financial affairs of all of the committees. The applications for most, but not all, of the committees have arrived before the subcommittee. The subcommittee studied them, totalled them and found to its horror that the applications were about two times as much or two and half times as much as the money that had been allocated.

We looked at the submissions carefully and suggested to the Standing Committee on Internal Economy, Budgets and Administration that the chairmen of the various Senate committees should accept a portion of their anticipated budget at this time in order to continue their work.

When the total requests were firmly totalled, we would be able to determine the size of the shortfall. At that point we would see to determine what the Senate wanted to do about it. If they wanted to go for more money, that would be a Senate decision. If they wanted to ask the committees to cut back on their activities, that would be a Senate decision.

It was not a decision that the Standing Committee on Internal Economy, Budgets and Administration could make at that point because the full total was not known. However, the total of budget requirements that had been received far exceeded the amount that had been voted to fund committee business.

All the committee chairmen agreed to this process. The Internal Economy subcommittee chairman, Senator Furey, has been assiduously following up to make sure that we proceed in a fair and equitable manner.

Honourable senators, the Internal Economy Committee agrees with the approach that the subcommittee was taking. The chairmen of all the committees agreed with the approach that was recommended. It now sits in that stage of the process. When the final numbers are determined, the Senate will need to decide whether or not we carry on with the requested studies or whether we cut them short and expend only the amount of money that has been allocated to this point. We are discussing matters of the internal operations of the financial end.



Senator Stollery is quite correct in saying that the total amount that he anticipates is for the European section as well as the American section. The Internal Economy Committee, after hearing from the subcommittee, suggested that he go ahead with the first phase. When we found out where we were financially, we could discuss the second phase.

We have no quarrel with the principle of the European expedition. The Senate has approved the study; the Senate has not approved the funding of the European part of the committee.

• (1530)

**Senator Lynch-Staunton:** Honourable senators, I was in error when I said that the budget had been approved. A more careful reading is that the budget is based on the terms of reference that were approved on March 1. I apologize for that.

On the other hand, this raises the problem of financing terms of reference approved by the Senate. Again it proves that we do things upside down. What should happen, to my way of thinking, is that a committee which has a study in mind should first go to the Standing Committee on Internal Economy, Budgets and Administration with a budget, determine whether funds are available or not, and then, with the support of the Internal Economy Committee, both the terms of reference and the budget could be approved at the same time.

As it happens, from what Senator Doody has said, only part of the monies for this study can be allocated at this stage, with no guarantee that the balance will be available. There is no suggestion that it will not be available, but there is no guarantee that it will be available because the demands are coming from everywhere, and there is only so much money available. That is frustrating for the members of the Internal Economy Committee, but it is more frustrating for the committee that wants to do its job. Perhaps the Internal Economy Committee might try to allow a better appreciation of both budgets and terms of reference by having both brought in at the same time.

**Senator Doody:** Senator Lynch-Staunton is absolutely correct. In an ideal world, we would be able to approve both the money and the committees. Unfortunately, the ideal world is shaped by the amount of money that is available to us.

If we went the route suggested by Senator Stollery, the first two committees that applied for their full budgets would receive approval and the rest of the committees would get nothing. That does not seem to be an ideal solution to the problem.

This subject is not new; it has been around for 20 years. I fully expect it to go on for another 20 years. No committee will ever be turned down in this place when it comes up with a proposal for a reasonable study or project.

On the other hand, the budget committee, and, indeed the financial people in charge of the budget process in Canada, will

not give us a blank cheque to spend all the money we want to in anticipation of some committee that wants to do a study. We must try to deal with this as best we can. The best that we can do at present is to ask Senator Stollery to go to Washington, to be a good boy, to try not to spend too much money, and when he comes back we will review the matter.

**Senator Bryden:** Honourable senators, in light of Senator Doody's explanation — and I understand completely because I was on that committee once — I now understand why this is happening, and I will support this motion.

I do not believe that what Senator Lynch-Staunton is proposing is possible under the rules. The rules need to be changed in order to make what he is saying possible. I have always made the argument that rules are the way they are so that people do not get approval for a study without attaching numbers to it, and then hammer the Internal Economy Committee by saying that they must approve what is being asked for. We must adjust the rules in order to do what the honourable senator is suggesting. I understand completely.

**The Hon. the Speaker:** I regret to advise Senator Stollery that his time has expired.

Are you requesting leave to continue, Senator Stollery?

**Senator Stollery:** Well —

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to extend the honourable senator's time for debate?

**Senator Stollery:** Actually, I have a question.

**Senator Lynch-Staunton:** Question!

**The Hon. the Speaker:** There is a question. I thought you were asking for leave to extend your time.

**Senator Stollery:** Honourable senators, what I am interested in is getting my three reports — the other two are not the least controversial — approved before the Senate rises.

**The Hon. the Speaker:** I should clarify. I interrupted Senator Bryden who was asking you a question. Do you wish to ask for time to deal with that question before we go to the question?

**Senator Bryden:** If you are asking me, the answer is "no." I am perfectly satisfied for Senator Stollery to proceed.

**The Hon. the Speaker:** It is moved by the Honourable Senator Stollery, seconded by the Honourable Senator Sparrow, that this report be adopted now. Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.



[Earlier]

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I draw your attention to visitors in our gallery. I am referring to participants in the Inter-American Defence College, an institution affiliated with the Organization of American States.

[Translation]

On behalf of all honourable senators, I bid you welcome to the Senate of Canada.

[English]

### STUDY ON EUROPEAN UNION

#### BUDGET—REPORT OF FOREIGN AFFAIRS COMMITTEE ADOPTED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Foreign Affairs (budget — special study on European Union) presented in the Senate on April 25, 2001.—(*Honourable Senator Stollery*).

**Hon. Peter A. Stollery:** Honourable senators, I move the adoption of the report.

Motion agreed to and report adopted.

### STUDY ON ISSUES RELATED TO FOREIGN RELATIONS

#### BUDGET—REPORT OF FOREIGN AFFAIRS COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on Foreign Affairs (budget — special study on foreign relations) presented in the Senate on April 25, 2001.—(*Honourable Senator Stollery*).

**Hon. Peter A. Stollery:** Honourable senators, I move the adoption of the report.

Motion agreed to and report adopted.

[Translation]

### BUSINESS OF THE SENATE

#### CLARIFICATION OF RECORD—POINT OF ORDER

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, it is 3:35 p.m. On

Wednesdays, we usually try to conclude Senate business by 3:30 p.m. I request, with leave of all senators, that all items appearing on the Order Paper remain in their present order until the next sitting of the Senate.

[English]

**Hon. Eymard G. Corbin:** Honourable senators, as a point of order, with respect to the motion or the proposal made by the Honourable Deputy Leader, I wish to point out that there is an omission in yesterday's record, following events that occurred when the Committee of the Whole reported progress and obtained permission to continue its work beyond six o'clock. At that time, the Honourable Deputy Leader sought and obtained permission from the house for committees to proceed with their work. I distinctly heard him say that it would be his intention later in the sitting to have all other matters stand.

On that understanding, I left this house and proceeded to the Standing Senate Committee on Foreign Affairs, of which I am a member.

• (1540)

I do not see those words in yesterday's Hansard. It was modified by the omission of those words. That is why, as senators will recall from earlier today, I was somewhat confused about the stage we were at with respect to a particular bill. I thought we were still at report stage, but I was informed that the report had been adopted. I left the house yesterday with a totally different impression. When I checked the record, I noticed the omission.

Honourable senators, once I have indicated a desire to speak to a bill at a specific reading, no senator can presume that it is in order for me not to be heard then, but instead that I could speak to the bill at the subsequent, or in this case third reading. When you look at Hansard, you will see that at the end.

Honourable senators, it may not be a serious matter, but I am concerned. I could just as easily speak to the bill at third reading, and I did use that opportunity today. However, it is serious to meddle with the official record, either to change the official record or to omit statements made in this house. That is my point of order, honourable senators.

**The Hon. the Speaker:** Does any other senator wish to speak specifically to the point of order?

**Hon. Marcel Prud'homme:** Honourable senators, I wish to speak specifically to another point.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, Hansard is not the official record. If anything is to be faulted, it must be the *Journals of the Senate*. We have many examples — or at least some examples — where Hansard and the Journals do not necessarily agree. I have always been told that the *Journals of the Senate* are the official record.

**Senator Corbin:** For legal purposes, the honourable senator is absolutely correct. I will not dispute that.

**Senator Lynch-Staunton:** The point of order should be based on that.

**Senator Corbin:** Honourable senators, with respect to proceedings in the house, we usually refer to, and in fact we often quote from Hansard, which is the newspaper of the Senate. It has that purpose.

I will add to my point of order: I wish for His Honour the Speaker or the Officers at the Table to check the tape of yesterday's proceedings in order to determine exactly what was left out of yesterday's Hansard.

**The Hon. the Speaker:** On Senator Corbin's point of order, Senator Sparrow.

**Hon. Herbert O. Sparrow:** Senator Corbin, are you asking that Hansard be corrected with the addition of omitted proceedings?

**Senator Corbin:** Was that question directed to me? Honourable senators, I ask that Hansard reflect, in totality, what was said in this house.

**The Hon. the Speaker:** On Senator Corbin's point of order, and before we proceed to Senator Prud'homme's point of order, the tape will be reviewed. However, as your Speaker, I will share with Senator Corbin my recollection. It was as described by Senator Kinsella and Senator Robichaud that item number one under Private Bills, Bill S-25, was dealt with as had been indicated in the exchange. The tape will be reviewed. The Clerk has assured me that the tape will be reviewed and that Hansard will be corrected accordingly.

**Senator Corbin:** I do not wish to comment on His Honour's recollection, because that would not be appropriate. However, I wish to add to the point that I made.

The offensive thing is that I was given assurance shortly after 6:00 p.m., after receiving permission to proceed to the Standing Senate Committee on Foreign Affairs, that all other items or matters would stand. That did not happen. There was departure from an earlier statement, a promise, and indeed, the house did proceed with the adoption of the report on that bill, contrary to what the deputy house leader had indicated would be done.

**Senator Lynch-Staunton:** The deputy house leader was quite right. We were still in the middle of that particular item; it was not another item. The particular item under discussion was

interrupted by the house going into Committee of the Whole, and it was understood that the item would be terminated after we resumed. All other items beyond that stood. I will let His Honour decide.

**Senator Corbin:** We will let the tape speak for itself, but there could be some confusion of your understanding of the proceedings. We were not on that item at the time.

**Senator Lynch-Staunton:** Yes, we were.

**Senator Corbin:** We were between matters, with permission to report and permission granted to continue Committee of the Whole, et cetera. We will let the tape speak.

[Translation]

**Senator Robichaud:** Honourable senators, yesterday, when the Senate interrupted its proceedings to go into Committee of the Whole, consideration of the report tabled by the Chair of the Standing Senate Committee on Legal and Constitutional Affairs was suspended. The Senate adjourned during pleasure and we then went into Committee of the Whole.

When the sitting of the Senate was resumed, the Honourable the Speaker put the question. I subsequently asked that all items appearing on the Order Paper remain in their present order.

[English]

**The Hon. the Speaker:** In any event, I will take this point of order as commented upon and debated. The upshot of it is that we will review the tape and correct the Hansard as required.

Point of order, Senator Prud'homme?

POINT OF ORDER

**Hon. Marcel Prud'homme:** Honourable senators, I am pleased that you will look into what took place. May I ask you to revisit an earlier decision that occurred.

When we debated, rightly so, the motion of Senator Lynch-Staunton, Senator Gauthier had asked to adjourn the debate under his name. I could be mistaken, so I ask you to kindly review what took place today. We should have disposed of that matter first. However, immediately following, Senator Kinsella astutely and wisely stood on a point of order, and demanded that Senator X, instead of Senator Y, be now recognized. We disposed of that.

Immediately, an event that took place in December 1964 came to mind. It was during the flag debate, and people wanted to listen to Mr. Diefenbaker speak to the national anthem. There was a great deal of conniving that took place, and it was decided that Mr. Pearson would be recognized. We voted on that, but it ended according to the rules. Of course, the motion to recognize Mr. Pearson in the minority government was accepted, and he spoke last.

Honourable senators, I am not sure; I may be wrong, but I humbly submit to His Honour that if I am wrong, I have no hesitation in saying that I will know for the future. However, I believe that I am not wrong. I ask if he would kindly revisit, not necessarily today, but revisit this incident and come back some time with his ruling, because I am afraid of the precedent that we may be creating.

Honourable senators, I almost rose earlier after the decision, while someone was speaking, to make a point of order that Senator Sparrow or Senator Chalifoux be recognized. The future of the revisit is important, and I ask His Honour to do that. If I am out of order, he will tell me so, but I urge His Honour to revisit the proceedings.

**The Hon. the Speaker:** Honourable senators, does anyone else wish to speak?

**Hon. John Lynch-Staunton (Leader of the Opposition):** Senator Gauthier did not move the adjournment of the debate. The Speaker told us that he had that in mind after Senator Grafstein had decided to withdraw his similar motion, before Senator Gauthier could rise. Senator Kinsella then applied rule 33, so everything was done in order.

**Senator Prud'homme:** Honourable senators, can we hear the tape?

• (1550)

**The Hon. the Speaker:** Are there any other honourable senators who wish to comment on this point of order?

I know honourable senators are anxious to proceed with committee work on what would normally be a short day. Rather than reading rule 33, I will just indicate to Senator Prud'homme that it is rule 33, as mentioned by Senator Lynch-Staunton, under which I proceeded. The operative provision of the rule is that when a third senator rises requesting that a particular senator be recognized instead of the one whom the Speaker is recognizing, that that matter be dealt with and that the question on such a motion be put forthwith without debate or amendment. That is the rule I was using, and that is what I did.

[Translation]

**Senator Robichaud:** Honourable senators, with leave of all honourable senators, I repeat my earlier proposal. I ask that all items on the Order Paper remain in their present order until the next sitting of the Senate.

The Senate adjourned until Thursday, May 3, 2001, at 1:30 p.m.







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CANADA

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OFFICIAL REPORT  
(HANSARD)

Thursday, May 3, 2001

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THE HONOURABLE DAN HAYS  
SPEAKER



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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Thursday, May 3, 2001

The Senate met at 1:30 p.m., the Speaker in the Chair.

[English]

Prayers.

• (1340)

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I draw your attention to the presence in our gallery of members of the Rocky Mountain College Choir from Calgary, Alberta. They are guests of the dean of the Senate, Senator Sparrow.

On behalf of all honourable senators, I bid you welcome to the Senate of Canada.

### BUSINESS OF THE SENATE

#### CLARIFICATION OF RECORD—POINT OF ORDER

**The Hon. the Speaker:** Honourable senators, yesterday a request was made to review the transcript of proceedings for May 1, 2001. Senator Corbin made this request as his recollection of proceedings differed from what appeared in the *Debates of the Senate*.

At page 729 of the *Debates of the Senate*, Senator Milne's intervention on Bill S-25, relating to the Conference of Mennonites in Canada, was suspended and the Senate was then put into Committee of the Whole.

I am able to report to honourable senators that the tapes have been reviewed. When debate was suspended, at approximately four o'clock, we were in the process of debating Bill S-25. When the sitting resumed, following the Senate being put into Committee of the Whole, we reverted to debate on Bill S-25. As I am sure Senator Corbin has seen, at page 746 of the *Debates of the Senate*, the motion was put to give second reading to Bill S-25. Comments pertaining to the business of the Senate were made at that time.

In regard to the issue of a deletion from the *Debates of the Senate*, Debates staff had edited a passage from the proceedings of the Committee of the Whole. Senator Corbin's recollection is correct.

[Translation]

Honourable senators, the translation of what Senator Robichaud said in French would be as follows:

As a matter of information, we want to ensure that all senators wishing to ask questions and to speak will have a chance to do so, but after the conclusion of this sitting we will ask that all items appearing on the Order Paper remain until the next sitting of the Senate. This is merely for your guidance.

Honourable senators, that was the quote. It was deleted by the Debates Branch because, in their view, it was a statement repeated later on the last page to which I referred; that is, the page that deals with the proceedings when second reading was given. This is sometimes done where it is believed by Debates that the repetition is unnecessary and that the deletion does not detract from the proceedings. The authority for doing so is found at page 222 of Erskine May, *Parliamentary Practice*, 22nd Edition.

Honourable senators, following a review of the taped proceedings, that is the report, as requested, on this matter.

**Hon. Eymard G. Corbin:** I am not sure if His Honour is making a ruling. If he is making a ruling, then I will not comment.

**The Chairman:** Honourable senators, I am not making a ruling. I am simply letting senators know the result of the review of the tapes, as well as why there was a deletion from the transcript of the proceedings of the Senate in Committee of the Whole.

**Senator Corbin:** Honourable senators, I do not want to protract this debate, but I think I have a valid point. I will state it and then let the matter rest.

I feel that the original statement ought to have remained. If there was a repetition, it is the repetition that should have been eliminated. The important consideration is not authority to delete or not a repetition but rather the impact it has on the conduct of individual senators.

When the initial statement was made, in French, that all remaining items would stand, I assumed that I could safely go to my committee and that I would not need to speak later that day. I assumed the item would never be reached because of the deputy leader's statement that I could safely go to my committee and that the matter of the bill would rest until the following day. The bill was then at the report stage.

Honourable senators, who in this house could affirm with any certitude that at the report stage I could not have wanted to make an amendment? I looked at the final disposition of the report stage later that day, and Senator Kinsella said, "Well, the Honourable Senator Corbin can always speak at third reading." However, in terms of actions that can or cannot be taken at a certain stage, I was misled into thinking that the item would stand at the report stage. I was deprived technically of any action I would have wanted to propose to the house at that time.



Honourable senators, that is the heart of the matter. Once an indication is given by the leadership that items will stand, and our understanding is that that will be a fact, we conduct ourselves consequently in terms of that statement. When a reversal is made and further action is taken at the report stage, that is not the proper way to conduct business.

I will not go any further, honourable senators, but I think this issue is more than just a matter of editing. This is a matter that affects the privileges of individual senators. If word is given, word ought to be honoured. If there was a will to change, in view of the fact that I had indicated I wished to speak at the report stage, I should have been informed of that. I could have come back from my committee, briefly made the statement I wished to make and perhaps an amendment. Now, it is all history.

**The Hon. the Speaker:** I have no further comment, honourable senators. We will now carry on with the Order Paper.

## SENATORS' STATEMENTS

### GLOBALIZATION

#### HEMISPHERIC HUMAN RIGHTS STANDARD

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, the recent Summit of the Americas, held in Quebec City, has underscored the ubiquitous social and economic processes of globalization in our time, which in turn should focus our attention on the prospects for a common morality, or common ethics, in the hemisphere, if not universally. The increasing hemispheric and global interconnection of national economies must generate efforts to establish hemispheric or universal standards for labour practices, ecological responsibility and ethical norms of social justice. Such standards or norms presuppose at least a rudimentary common ethic that crosses national boundaries. Canada should assume a leadership role in the articulation of hemispheric human rights values as a foundational stone for such a common ethic.

[Translation]

### ONTARIO

#### COLLEGE TRAINING FOR FRANCOPHONES

**Hon. Jean-Robert Gauthier:** Honourable senators, today I should like to speak about college training in French, in Ontario.

The four French-language colleges in existence in Ontario at the present time, that is le Collège de technologie agricole

d'Alfred, la Cité collégiale in Ottawa, le Collège Boréal in the North of the province, and le Collège des Grands Lacs in Toronto, are seeking funding from the federal government to provide training in French for students who want it.

Ontario is the only province that has not yet signed an agreement with the federal government. At present, Ontario francophones are left somewhat adrift.

According to the statistics, la Cité collégiale and le Collège Boréal — the college for Northern Ontario — are the only two places in Ontario where a francophone can get apprenticeship training. Between 1987 and 2001, the number of students in our post-secondary institutions dropped from 281 to 91.

The drop in clientele has had a real impact on the physical space available for students. Post-secondary colleges, for lack of space, cannot draw sufficient clientele.

The federal government has an obligation to help young people continue their education in French, in Ontario. We are told that the agreement has not been signed with the province. Nevertheless, the federal government has an obligation to get involved, provide financial assistance to students for their education and continue to promote education in French.

If the government does not want these young people to continue their education in their mother tongue, let it say so publicly. I think it is vital that young people in our country have the opportunity to get the training they need in their chosen field.

In Ontario, they are refusing to pay for Quebecers wanting to get an education at the Cité collégiale. This is not right. We cannot divide up our country into regions, saying: "If you live there, you cannot come here."

I think Canada represents a lot more than that: We have to allow Canadians from the West and the East, from Quebec and elsewhere, to get the training they may not be able to get at home.

I could talk at length about the need for technicians in a number of fields connected with high tech. I call on the honourable senators to support me in this action.

• (1350)

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I would draw your attention today to the presence in our gallery of the participants in the Forum for Young Canadians, whom you met this morning.

## ROUTINE PROCEEDINGS

### CANADIAN TOURISM COMMISSION

#### REPORT TABLED

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table, in both official languages, the annual report of the Canadian Tourism Commission for 1999-2000, entitled "Working together, Succeeding together."

### MOTOR VEHICLE TRANSPORT ACT, 1987

#### BILL TO AMEND—REPORT OF COMMITTEE

**Hon. Lise Bacon,** Chair of the Standing Senate Committee on Transport and Communications, presented the following report:

Thursday, May 3, 2001

The Standing Senate Committee on Transport and Communications has the honour to present its

#### THIRD REPORT

Your Committee, to which was referred Bill S-3, An Act to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts, has, in obedience to the Order of Reference of Wednesday, February 7, 2001, examined the said Bill and now reports the same with the following amendments:

1. *Page 6, clause 6:* Replace line 9 with the following:

"specification, entry on premises and the provision of information; "

2. *Page 8, clause 9:*

(a) Add after line 26 the following:

#### "ANNUAL REPORT

25. (1) The Minister shall prepare an annual report and cause a copy of it to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister completes it.

(2) The annual report of the Minister shall contain the following in respect of the year:

(a) the available statistical information respecting trends of highway accidents in Canada involving motor vehicles operated by extra-provincial bus undertakings and extra-provincial truck undertakings reported for bus undertakings and truck undertakings; and

(b) a progress report on the implementation of rules and standards respecting the safe operation of extra-provincial bus undertakings and of extra-provincial truck undertakings;"; and

(b) Replace line 27 with the following:

"26. (1) The Minister shall, after the expiry"

3. *Page 9, clause 9:* Add after line 5 the following:

"(3) The Minister shall cause a copy of the report to be laid before each House of Parliament during the first thirty sitting days of that House following its completion."

Your Committee also made certain observations, which are appended to this report.

Respectfully submitted,

LISE BACON  
Chair

(For text of appendix, see today's Journals of the Senate, Appendix "A" p. 503.)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Bacon, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

• (1350)

[English]

### EMPLOYMENT INSURANCE ACT EMPLOYMENT INSURANCE (FISHING) REGULATIONS

#### BILL TO AMEND—REPORT OF COMMITTEE

**Hon. Marjory LeBreton,** Deputy Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Thursday, May 3, 2001

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

#### FIFTH REPORT

Your Committee, to which was referred Bill C-2, An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations, has, in obedience to the Order of Reference of Tuesday, April 24, 2001, examined the said Bill and now reports the same without amendment.



Attached as an Appendix to this Report are the observations of your Committee.

Respectfully submitted,

MARJORY LEBRETON  
*Deputy Chair*

(For text of observations, see today's Journals of the Senate, Appendix "B", p. 504.)

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Cordy, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

## QUESTION PERIOD

### FISHERIES AND OCEANS

#### ATLANTIC PROVINCES—COOPERATION BETWEEN LOCAL AND NATIVE FISHERIES

**Hon. Gerald J. Comeau:** Honourable senators, my question is directed to the Leader of the Government in the Senate. As the minister will know, the native fishery will soon be upon us in many parts of Atlantic Canada. Can the Leader of the Government tell us what steps the government will take to ensure that the rule of law prevails on the water this year and that incidents such as those that happened last summer will not be allowed to take place?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for his question. As he well knows, the Minister of Fisheries and Oceans, through representatives, has been working on a negotiated settlement with the native fishery. I am pleased to say that the opening days have been extremely peaceful. We hope that they will continue that way and that the spirit of cooperation that has been shown so far will be the spirit in which the fishery is conducted this season.

### STATISTICS CANADA

#### CENSUS QUESTIONNAIRE—OMISSION OF ACADIANS AS CULTURAL GROUP

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, while I am on my feet, in response to a question the honourable senator asked the other day, I looked at the census form in some detail. I will take his questions forward because I think they are legitimate ones, the Senate should know that there is an opportunity in the "other" column to self-identify with any ethnic group one wishes.

**Hon. Gerald J. Comeau:** Honourable senators, the minister has raised the question of the census. I did see that there was a

column for ethnicity or cultural background. I felt that the government might not wish to relegate Acadians to a column headed "other," especially since Chilean, Vietnamese and various other ethnic backgrounds are included on the form. I would have thought that Acadians, being the first European settlers in Canada, would have at least equal status to other ethnic and cultural groups and not be relegated to the term "other."

I believe it is a mistake for those responsible for the census to have "forgotten" — as I will describe it — the Acadians. In future surveys, such a thing must not happen.

**Senator Carstairs:** Honourable senators, I agree with the Honourable Senator Comeau and that is exactly why I will take the intent of his question forward. I fully concur with his intention.

## THE SENATE

### BILL ON SALARY INCREASES FOR JUDGES— DELAY IN LEGISLATION

**Hon. Edward M. Lawson:** Honourable senators, my question is directed to the Leader of the Government in the Senate and to do with the handling of Bill C-12, the judges bill. The matter was before us last week and then came before us again this week. In the 45 minutes allotted to Senator Grafstein to debate the bill, we had a very intellectually stimulating dialogue about the Constitution and other matters. Only in the dying moments of the 45 minutes did Senator Finestone display her wisdom and tremendous grasp of the obvious by saying that this is a salary bill.

I asked whether I could address the bill yesterday and was told that the rules provide for the Leader of the Opposition or designee to address it, after which we could debate it. The matter was called, I heard the word "stand," and the bill was gone.

My concern is twofold. First, judges have gone many years without a pay increase or salary adjustment. That may not be a priority to some here, but I am sure it is a high priority to the judges.

• (1400)

The other concern I have comes about as the result of Senate hearings in Vancouver last week, at which time a number of lawyers came to me with a serious problem in the courts of British Columbia resulting from the shortage of judges. Vacancies have not been filled. These lawyers, together with their clients, went to court in New Westminster, about an hour's drive away, not on one but three occasions, to be told there were no judges available and they would have to reschedule their court date.

This situation causes tremendous expense to citizens of British Columbia. This leads me to my next question: Is this shortage of judges caused by the minister being slow in making appointments, or does the uncertainty of the salary bill influence lawyers taking appointments to the bench? If the latter is causing the problem, we have a responsibility to move this bill along as quickly as possible.



Perhaps I feel this way because of my labour background. In labour relations, there is an unwritten rule. Those who have control of salaries or salary adjustments over groups or individuals who have no bargaining rights have a duty and a responsibility to get the salaries or adjustments in the hands of the recipients as quickly as possible.

I have the impression there is a go-slow procedure in place and that no one is in a particular hurry to deal with this situation. Judges have been waiting a long time. Under the rules, the commission should have made its findings at the end of September; these findings should have been in the House of Commons and the Senate much sooner. It has now been six or seven months.

The other thing to consider is that there are only two occasions when the Senate deals with salary issues: for members in the House of Commons and the Senate, and for judges. In our own case, if my recollection is correct, we took either one or two sessions; I believe it was one. We had first reading, second reading, third reading and the vote; it was sent for Royal Assent and was done in one day.

It seems to me we owe at least the same process to judges. Many of the thousand-plus judges serve at great sacrifice, at their choice. After all, they would have made more money had they stayed in practice. They are human beings with spouses, families and financial needs.

There seems to be a malaise on both sides of the house. Is there an agreement between the government and the opposition to adopt a go-slow policy? Being charitable, is it just a situation of spring fever, where we cannot deal with it this week so perhaps we will deal with it next week or a month later or after the summer?

Does the Leader of the Government have an answer to those two questions? It is a serious matter and an urgent priority. I do not believe the matter should go to committee. It is a commission's report. We are not going to change it one penny up or down. Why not deal with it as expeditiously as possible, send for the royal carriage and take care of the judges?

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his question. I hope I can answer all parts of it.

Let me begin by saying the bill has not yet been sent to committee. It is still before the Senate. The bill was received last week. The first eligible time for second reading was last Thursday. The speaker for the government asked if he could have one day. That was Thursday. The sponsor of the bill, Senator Grafstein, spoke on Tuesday. That then gave the opposition member a chance to speak. I am sure the opposition member will speak next Tuesday. It will be on the Order Paper this afternoon.

Senator Lawson, I am sure the opposition will not object if you wish to say a few words at that time prior to their main speaker. I can see no reason why they would object to that procedure.

It is our hope that we will be able to refer the bill to committee by next Tuesday. That would give the Standing Senate Committee on Legal and Constitutional Affairs the opportunity to discuss it Wednesday and Thursday of next week.

As to why we are not doing first, second and third readings all in one day, that has not been the way, quite frankly, that we have been operating with regard to any piece of legislation, with the exception of very rare pieces of legislation. I do not consider this legislation rare. The judges will be appropriately remunerated as the commission has indicated they should be.

## FISHERIES AND OCEANS

### BRITISH COLUMBIA—COLLAPSE OF HAKE FISHERY

**Hon. Pat Carney:** Honourable senators, my question is short. The hake fishery on the West Coast has collapsed.

**Senator Bryden:** Teamsters should organize.

**Senator Carney:** Could I have the attention of honourable senators?

The hake fishery on the West Coast has collapsed. Three plants have closed in Ucluelet, throwing hundreds of people out of work. When this type of disaster has occurred on the East Coast, there have been programs and relief for the fishermen involved. Although there have been meetings held on the West Coast, there has been no action from the federal government.

Can the Leader of the Government in the Senate please tell me why there is a disparity of treatment between West Coast and East Coast fishermen?

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for her question. I am sorry to learn — for the first time, I must say — that the hake fishery has closed down. As to whether there will be compensation for those who work in that field, I will try to generate an answer as quickly as possible.

Compensation programs in all cases have taken a long time to come to a final resolution. I do not think the West Coast in this case is being treated any differently from the East Coast.

**Senator Carney:** We will see what relief is offered to the West Coast fishermen in the face of the hake fishery collapse.

## INTERNATIONAL TRADE

### UNITED STATES—RENEWAL OF SOFTWOOD LUMBER AGREEMENT—DIFFERENCE IN APPROACH AS BETWEEN WEST COAST AND MARITIME INDUSTRIES

**Hon. Pat Carney:** My second question deals with the softwood lumber dispute. American lumber producers are seeking duties that will add about 80 per cent to the cost of Canadian lumber in the American market, retroactive to April 7.

In Moncton, the Prime Minister indicated his willingness to negotiate this issue, but later the Prime Minister's Office clarified that that was for Maritime producers only. In the case of the Western producers, in Alberta and British Columbia, the policy is still to go to long-term and expensive litigation.

Once again, why the disparity in treatment between the Maritime and the West Coast lumber producers?

**Hon. Sharon Carstairs (Leader of the Government):** The honourable senator asked why a disparity exists. The disparity has existed for some time in that the Atlantic provinces had a particular agreement with the United States, an agreement that the West Coast did not have. It was an agreement entered into by both parties, satisfactorily. It was the desire of this government, when the present arrangements broke down and the softwood lumber agreement — which only impacted Western Canada — came to an end, that it would negotiate an equitable arrangement from coast to coast to coast.

**Senator Carney:** That is wrong. I must correct the minister. There has never been the slightest suggestion from her government that the government is willing to negotiate anything, except for the Prime Minister's statement in Moncton that he is willing to negotiate for Maritime producers.

The position of the Government of Canada has been to drag this out through the process of the WTO and litigation. I would ask the minister to check her facts and report what the government's position is to this chamber, because it is not the one she has just enunciated.

**Senator Carstairs:** The government's position is that, quite frankly, we have an agreement. It is called the Free Trade Agreement. The honourable senator certainly has much greater knowledge of it than I.

We also have a North American Free Trade Agreement. Softwood lumber should be able to cross the border without any countervails, without any duties. Everyone in the softwood lumber industry should have equitable treatment, whether they are in Atlantic Canada or in British Columbia.

**Senator Carney:** Possibly the minister can pass that view on to the Prime Minister. That is not what he said in Moncton.

**Senator Carstairs:** The Prime Minister has been unequivocal in saying that we are owed the respect of the free trade agreements. Those free trade agreements would provide for equitable treatment.

## THE SENATE

### UNITED STATES—MISSILE DEFENCE SYSTEM—PROCEDURE TO BRING MATTER BEFORE COMMITTEE

**Hon. Douglas Roche:** Honourable senators, this question is directed to the Leader of the Government in the Senate.

Yesterday, in commenting on the missile defence question, the minister suggested that potentially two committees in the Senate might look at this matter, one being Foreign Affairs and the other the new Defence committee.

[ Senator Carney ]

• (1410)

The minister said that both could be mandated by this chamber to examine the issues that are clearly of great concern. Can the minister advise me what appropriate steps might be taken to effect a committee study in the Senate of the missile defence question?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as Senator Roche knows, that is a procedural matter. It would require a motion to be passed by the Senate with a referral to one or both committees.

**Senator Roche:** I have a motion that has been on the floor for some time on that very subject, but that motion does not mention the committee. I had not thought of it at the point when I wrote the motion.

Can the minister advise what might be done to move this motion forward? I would be willing to have it amended so that it could go to a committee for study. Is there any way that I can effectuate action on the motion that is now before the house with this point in mind?

**Senator Carstairs:** The honourable senator has asked a very technical question. He is the mover of the original motion, but another senator can move to amend the motion. If the amended motion passed, with an included referral to a committee, then it would be done.

[Translation]

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table delayed answers to questions raised by the Honourable Senator Oliver on March 22, 2001, and by the Honourable Senator Andreychuk on April 27 and 28, 2001, regarding the civil war in Sudan; to a question raised by the Honourable Senator Oliver on April 27, 2001, regarding the International Development Research Centre; and to a question raised by the Honourable Senator Rompkey on March 13, 2001, regarding the Davis Inlet Treatment Program for Native Children.

## FOREIGN AFFAIRS

### CIVIL WAR IN SUDAN—INVOLVEMENT OF TALISMAN ENERGY INC.

(Response to questions raised by Hon. Donald H. Oliver on March 22, 2001 and Hon. A. Raynell Andreychuk on March 27 and March 28, 2001)

Canada's principal policy objective with respect to Sudan is to promote and support efforts leading to a comprehensive peace. Canada's own efforts are informed by the belief that peace is the only sure means of resolving the humanitarian and human rights crises in Sudan, and that this goal must be pursued tirelessly through all available multilateral and bilateral channels.



As regards the role of Canadian businesses in Sudan, Canada has a very clear position. While we do not encourage investment in Sudan, neither do we pose legal obstacles to Canadian companies wishing to do so. The government of Canada has no economic sanctions in place against Sudan. The Special Economic Measures Act, which is designed to provide domestic application for international sanctions regimes called for by international bodies such as the United Nations, is used in cases of conflict between States. It does not apply to the civil war in Sudan, a country that is not under UN sanctions in the area of foreign investment.

As well, it is not Canadian practice to impose sanctions against private sector enterprises. Unless Canadian sanctions legislation is changed, the Canadian government cannot legally impose restrictions on the foreign activities of a particular company.

We expect Canadian companies active in Sudan to take every precaution to ensure that they will not contribute, directly or indirectly, to the suffering of the civilian population, or engage in activities that might place Canadians at risk. We have urged these companies to undertake and implement initiatives that have a positive impact on human rights, labour standards, and the environment, such as the adoption of codes of conduct including the International Code of Ethics for Canadian Business.

We also continue to urge the government of Sudan to provide transparent accounting of foreign business activity in Sudan, as a means of ensuring that the domestic proceeds of this foreign investment benefit the Sudanese population as a whole and are not used to fuel the war.

As regards the peace process, Canada continues to support the peace mechanism sponsored by the Inter-Governmental Authority on Development (IGAD), through Canada's membership in the IGAD Partners' Forum (IPF). We believe, however, that this process needs to be re-energized and that IGAD members must become more active in the search for solutions. We look forward to the upcoming Summit of the IGAD Committee for Sudan and believe this will provide a good barometer of the viability of the IGAD process. The IPF partners recently agreed that their continued funding support for the IGAD Secretariat will be conditioned on a renewed momentum for peace following this Summit. If the summit does not prove fruitful, Canada will argue that a new forum for the peace

process is probably needed, and will propose that the OAU be consulted in this regard.

#### INTERNATIONAL DEVELOPMENT RESEARCH CENTRE—WITHDRAWAL OF AID TO SOUTH AFRICA

*(Response to question raised by Hon. Donald H. Oliver on March 27, 2001)*

The International Development Research Centre is a parliamentary crown corporation, with an independent board of directors responsible for making decisions on the administration and planning of the institution. As a result, the Government is not in a position to instruct the IDRC on the deployment of its resources.

This being said, it is clear that the IDRC recognizes the important role that South Africa is and will continue to play in African development, and that the IDRC is making no cuts at all to its programming budget for projects in South Africa. What the IDRC is doing is consolidating its administrative functions for Africa in its office in Nairobi, Kenya. Like most institutions, the IDRC faces very real pressures on its overall budget, and was faced with making hard decisions regarding closure of offices. In the end, the IDRC was forced to choose between closing its South Africa administrative office to protect its full project budget, or keep a physical presence in South Africa, but be left with minimal resources to undertake any actual programming. The IDRC chose to protect the programming designed to help South Africa consolidate and advance the remarkable progress they have made since the installation of democratic rule in 1994.

#### INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

##### DAVIS INLET TREATMENT PROGRAM FOR NATIVE CHILDREN

*(Response to question raised by Hon. Bill Rompkey on March 13, 2001)*

Health Canada is well aware of the serious health issues faced by Aboriginal people in Canada and is making inroads in the Innu communities of Davis Inlet and Sheshatshiu. Health Canada is convinced that by working together, we will find ways to address the problems that are front and centre today.

The Innu community of Davis Inlet has been plagued by abnormally high solvent abuse rates for many years and more recently Sheshatshiu has been plagued with the same problem. Over the past year, the incidence of gas-sniffing has increased to alarming proportions, especially among the younger children. Health Canada has put in place a number of services as well as funding to address this issue.



In 1993, following a gas-sniffing-related crisis, Health Canada began to fund programming targeted to the special needs of the Mushuau Innu (the residents of Davis Inlet). Likewise, following extended consultations and negotiations, the Department of Indian and Northern Affairs Development received authority and funding to relocate the community to a new site in Sango Pond.

Health Canada funding for Sheshatshiu (population 1,072) is in excess of \$1.8 million for ongoing programs such as public health, addictions, prevention and other healing programs and for operating costs for the recently opened 12 bed solvent treatment centre in the community. In the health sector, the province supplements these services with treatment nursing and subsidizes the cost of medical transportation to its hospital on the island.

Health Canada funding for Davis Inlet (population 598) for the same ongoing programs as Sheshatshiu is approximately \$1 million. In addition, targeted funding of \$300,000 was offered for the community's special needs such as a healing coordinator, crisis intervention and family-oriented culturally-appropriate addictions treatment. The province's health service delivery role here is the same as in Sheshatshiu.

On November 26, 2000, Industry Minister Brian Tobin, Newfoundland Premier Beaton Tulk, Ernest McLean, Newfoundland Minister responsible for Labrador, Lawrence O'Brien, Labrador MP, Wally Anderson, MHA for Labrador/Torngat Mountains, Innu Nation President Peter Penashue and Chief Paul Rich, of Sheshatshiu, met with federal, provincial and band officials in Goose Bay to explore long- and short-term solutions to the social and cultural problems facing the Innu children of Sheshatshiu.

They agreed, among other things, that the first priority in the situation was for the protection and well-being of the children affected by the gas-sniffing; that federal and provincial officials would work closely together with the community to put in place appropriate treatment options as quickly as possible and to commit the necessary resources; that the Government of Canada would register the Innu under the *Indian Act*; that provincial and regional officials would establish a regional detoxification centre in Labrador; and that family-centered treatment programs would be developed for the Innu.

A meeting was held on December 11, 2000 between Chief Simeon Tshakapesh, Health Minister Allan Rock and Industry Minister Brian Tobin to address children and youth

at risk in Davis Inlet. On December 13, it was announced that an agreement of commitments was reached.

Under the agreement, Health Canada has committed as top priority to support the Mushuau Innu and the Province of Newfoundland and Labrador in securing the safety and appropriate short and long treatment of the affected children in Davis Inlet.

The agreement outlines the following:

Health Canada is committed to working cooperatively and on an urgent basis with the Mushuau Innu;

to reach agreement, in consultation with the Province, on an appropriate treatment plan for the affected children as soon as possible;

to ensure, in cooperation with the province, that the previously committed regional detoxification center is located in close proximity and access to appropriate medical facilities with necessary staff and programming resources in Labrador;

to develop, in cooperation with the province, a culturally appropriate family-centered treatment plan for both parents and children, so that children who need to leave for treatment can be reintegrated into a safe and nurturing family and community setting;

to provide, in cooperation with Indian and Northern Affairs Canada, a social services coordinator to coordinate activities between federal, provincial and Innu agencies at Davis Inlet;

to explore other necessary long-term initiatives in the mandate of Health Canada to repair the cultural and social fabric of the communities of Davis Inlet and Natuashish; and

Health Canada is committed to providing all necessary human and financial resources as agreed with the Mushuau Innu including direct financial resources to ensure timely implementation of the commitments.

The main concern remains ensuring the health and safety of the Innu children and working hard to ensure their situation improves.

#### **Action**

The recent growth in the incidence of solvent abuse has led Health Canada to take the following steps:

*Sheshatshiu*

In December 2000, 19 children were apprehended by Newfoundland social workers and were taken to facilities in Goose Bay. These individuals have been through a period of detoxification and medical, addictions and psycho-social assessment, and treatment plans have been developed for each individual. Only six remain at the facilities in Goose Bay and they soon will be returned to their community for the next steps in their treatment (the other 13 are in treatment facilities, foster-care or in country treatment programs).

With funding provided by Health Canada, an adult addictions day program and an outreach program have been instituted within the community. The adult day program is intended to begin building skills among the parents so their children can be re-integrated into the family in the near future. The results of the program have been exceptional for those involved, with the outcome being an elimination of family/domestic violence, voluntary support groups established by the participants and a commitment by participants to continue this process and help others.

The longer-term family-centered treatment program promised in the agreement of November 26, 2000 has been developed by Sheshatshiu in consultation with Health Canada and provincial officials and Health Canada has agreed to begin funding the program in April 2001.

As a result of interventions to date there are no signs of children gas-sniffing within the community at present.

*Davis Inlet*

As of March 30, 2001, 32 at-risk children from Davis Inlet have been assessed at the Grace facility in St. John's, Newfoundland. They too have been through a period of medical, addictions and psycho-social assessment as well as a program of detoxification. In addition, recommendations for individual treatment plans have been completed by a clinical assessment team.

On March 29, 2001 at a meeting in St. John's, representatives of the Mushuau Innu, the Government of Newfoundland and Labrador and Health Canada agreed on a short-term plan for the treatment of the children and a strategy for developing a long-term treatment plan. In addition, at this and at a previous meeting, agreement was reached on a number of related issues such as assessment and treatment for a group of young adults still in the community and an in-country mobile treatment program for

older adults of Davis Inlet, and in particular the parents of the affected children.

**Planned Action**

The short-term treatment plan identifies treatment options relative to each child's assessed level of risk.

High-risk children will be placed within a matter of days into a First Nations-operated solvent abuse treatment centre, funded by Health Canada.

Medium-risk children will be placed within a matter of weeks into alternate living arrangements incorporating appropriate treatment. This will be done in Goose Bay.

Low-risk children will be placed in an Innu-operated Youth Country Treatment Program within a matter of weeks. This type of program, which has been funded by Health Canada since 1993, addresses addictions issues directly while focusing on subjects that promote healing, especially Innu culture and way of life.

*The General Situation*

Health Canada and Newfoundland Health and Community Services have agreed on how the two departments will cost-share expenditures incurred during the 2000-01 fiscal year and where the lead role will reside for support of future healing activities for the Mushuau Innu.

In January 2001, Health Canada opened an office in Goose Bay, Labrador specifically to work with the two Innu communities. By having staff in close proximity to the Innu we hope to optimize the partnership that has been established and to provide high-quality service to the two communities. As well, this office has been able to establish close working relationships with other government departments in the Happy Valley-Goose Bay area on a wide range of issues important to the overall healing strategy.

Health Canada, with other federal departments, is looking at other necessary long-term initiatives that will help in repairing the cultural and social fabric of these communities. The complexities of the problems in these communities mean that solutions will not be found overnight. The Innu have experienced the complete transformation of their traditional way of life within one generation. It will take time and effort to help these communities. The Government of Canada will continue to encourage a holistic, culturally-appropriate approach to healing in Davis Inlet and Sheshatshiu with the input and assistance of provincial partners and the Innu.



[English]

## PARLIAMENTARY BUILDINGS ADVISORY COUNCIL

### REPORT TABLED

Leave having been given to revert to Tabling of Documents:

**Hon. Bill Rompkey:** Honourable senators, I have the honour to table, with leave of the Senate, the report of the Parliamentary Buildings Advisory Council dealing with the future of Parliament Hill and the accommodation for the precinct, including both Houses and the Library of Parliament.

## ORDERS OF THE DAY

### JUDGES ACT

#### BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Cook, for the second reading of Bill C-12, to amend the Judges Act and to amend another Act in consequence.

**Hon. Edward M. Lawson:** Honourable senators, I would take this opportunity to speak, but, as you know, I only make brief speeches and the bulk of my speech was contained in the prelude to the question I asked the Leader of the Government. Her answer is a reasonable explanation and I accept that.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** That is why one should not presuppose legislation during Question Period.

**The Hon. the Speaker:** Does an honourable senator wish to move adjournment of the debate?

**Senator Kinsella:** Honourable senators, the adjournment had been in the name of Senator Nolin, but I know he would have yielded the floor, had Senator Lawson wished to speak. I move adjournment of the debate on behalf of Senator Nolin.

On motion of Senator Kinsella, for Senator Nolin, debate adjourned.

## BILL TO MAINTAIN THE PRINCIPLES RELATING TO THE ROLE OF THE SENATE AS ESTABLISHED BY THE CONSTITUTION OF CANADA

#### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Corbin, for the second reading of Bill S-8, to maintain the principles relating to the role of the Senate as established by the Constitution of Canada.—(*Honourable Senator Carstairs, P.C.*).

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I rise to speak to Bill S-8 and the role of the Senate. Let me begin by saying that Senator Joyal is to be commended for his diligence in protecting the authority of the Senate and its capacity to carry out the roles and function assigned to it by the Constitution of Canada. It is evident that the bill before the Senate is the result of a good deal of hard work and careful drafting. Senators Grafstein, Kinsella, Moore, Cook, Christensen and others have also contributed to the debate on this important subject.

There seems to be one thing on which we can all agree in this chamber. It may be an unusual thing, but it is one on which we will have no difficulty agreeing: that is, the Senate has a important constitutional role and we should work to correct any casual or inadvertent exclusion of the Senate from statutes in which the House of Commons is included.

For that reason, there are a number of elements in Senator Joyal's bill that the government can quite readily support. These are mainly the elements that seek to include the Senate in, first, provisions where ministers, departments, agencies or offices of Parliament are required to submit reports to the House of Commons alone; second, provisions mandating the review of an act by a committee of the House of Commons alone; and, third, provisions requiring that the Minister of Justice certify that government bills introduced in the House of Commons comply with the Charter and with the Bill of Rights.

The exclusion of the Senate in most of these kinds of provisions seems to fit the category of oversight rather than deliberate exclusion on policy grounds. The committee that examines the bill will want to examine each case carefully to determine whether there is an overriding policy reason for excluding the Senate, but there seems to be a consensus that the Senate could readily be included in most if not all of these.

A few provisions, however, are of a somewhat different class: not so much reporting and review provisions as provisions that delegate authority to the House of Commons and not to the Senate. One example is subsections 153(3) through 153(6) of the Employment Insurance Act, which give the House of Commons the power to disallow certain regulations made under that act. The Senate gave its consent to that act in 1996. The committee



will want to bear in mind whether there were and continue to be good policy reasons for giving the disallowance power to the House of Commons and the House of Commons alone.

Another element that raises questions has to do with the Ministries and Ministers of State Act. The provisions therein which make the establishment of government departments subject to the approval of the House of Commons appear to be consistent with the notion that the House of Commons is the pre-eminent "confidence chamber." It seems a matter of settled constitutional convention that the forming of a government and the reorganization of the ministry is subject to the approval or disapproval of the Commons but not of the Senate.

The government is not of the view that this case was an oversight. Rather, it appears that the provision in the act was approved with that important constitutional convention in mind.

Senator Joyal said in his speech that he sees "...no reason to try to determine what Parliament's intentions were when these provisions excluding the Senate were passed."

• (1420)

Yet he also concluded that, "the reasons no doubt varied widely from simple omission to a conviction that the Senate has no stake in the matter at issue."

Honourable senators, I concur with the second element of that statement, but I cannot agree with the first. If Parliament consciously and intentionally excluded the Senate from certain provisions for specific policy reasons, we ought to be reminded of these reasons before we take the decision to overturn them. The committee to which this bill is referred will want to consider in each of the 27 cases whether there was a sound policy reason behind the exclusion of the Senate. Senator Joyal, in moving second reading of the bill and in giving his excellent speech, seems to have followed this approach in drafting Bill S-8. He clearly made a decision, for example, not to attempt to give the Senate a role equal to the House of Commons in the relevant provisions of the Clarity Act or the Elections Act. No doubt he did not include those acts in the bill because in those two cases the Senate excluded itself consciously, not as a result of an omission but because of a conviction that a delegation authority to the House of Commons alone was both reasonable and appropriate in those individual cases.

Having said that, honourable senators, I am pleased to point out that in Bill C-9, which is currently before us, the government has taken the initiative to amend a section of the Elections Act to include the Senate where previously only the House of Commons was given a role. I draw the attention of the Senate to the initiative in order to illustrate the point that the government believes that the Senate has an important role to play in the Parliament of Canada and that the statutes of Canada should reflect that role. Not only does the government believe in the principle, but we are acting on it.

Broadly speaking, the government supports the idea of correcting oversight and omission. Senator Joyal's bill is an important step in that direction.

At the same time, the government would urge the Senate to consider carefully whether there was a policy rationale for referring to the House of Commons alone in each of the 27 acts enumerated in Bill S-8. If there were such a rationale at the time of the passing of the original provision, and that rationale still holds true today, we would hope that those elements would be left out of the bill. We believe it is important to apply this test to all elements of the bill, including those that on their face appear to be ordinary reporting or review requirements.

We also have some concerns about the preamble and the description of the constitutional context of this proposed enactment. We do not quarrel with the idea of having a preamble, but we hope that the committee will examine it carefully to be sure its description of the constitutional context is as full and as accurate as possible.

It is my hope that the committee examining this bill will come back to the Senate with a product that will find support both in this chamber and in the other place. The Senate should seize this opportunity to redress past omissions and secure the correct role of the Senate in our parliamentary system. I can only express my most sincere thanks to Senator Joyal for providing us with this important opportunity.

**Hon. Lowell Murray:** Honourable senators, would the Leader of the Government tell us who the government intends to send when, as we expect, the bill goes to the committee to enlighten the committee as to the background and rationale in each of the 27 cases to which she referred? Will representatives from the Privy Council office or the Department of Justice provide the rationale? Will there be ministers or officials? Who will be sent?

**Senator Carstairs:** I thank the honourable senator for his question. The committee to which this bill will go should decide which witnesses they would hear. It might well involve both representatives of Privy Council, who might have the institutional memory to give us the *raison d'être* for the original, and perhaps a minister, like the Deputy Prime Minister, who also would have long-term experience.

[Translation]

**The Hon. the Speaker *pro tempore*:** Do any other senators wish to speak?

**Hon. Marcel Prud'homme:** Honourable senators, I was going to seek leave of the House to adjourn this debate in my name until the next sitting of the Senate. However, if certain honourable senators are determined to wrap up the debate today, I could make a few comments without my notes. If you intend to adjourn debate of this bill today at second reading stage, I will therefore ask that the debate be adjourned in my name.

**The Hon. the Speaker *pro tempore*:** Does Senator Joyal have questions?

**Hon. Serge Joyal:** Honourable senators, I move that Bill S-8 be referred to the Standing Senate Committee on Privileges, Standing Rules and Orders so that we may continue the debate on the basis of comments and proposals made by various senators on the content of the bill.

I certainly recognize Senator Prud'homme's right to take part in the debate at second reading stage. He would certainly be welcome to sit in on the committee, which will be debating each of the bill's components. This would allow us to get to debate quickly.

[English]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I rise on a point of order. My honourable colleague, Senator Prud'homme, to my hearing, moved a motion to adjourn. That motion cannot be debated.

On motion of Senator Prud'homme, debate adjourned.

## CUSTOMS ACT

### BILL TO AMEND—SECOND READING

Leave having been given to revert to Order No. 2:

On the Order:

Resuming debate on the motion of the Honourable Senator Setlakwe, seconded by the Honourable Senator Gill, for the second reading of Bill S-23, to amend the Customs Act and to make related amendments to other Acts.

**Hon. W. David Angus:** Honourable senators, today it is my pleasure to join debate at second reading of Bill S-23. Senator Robichaud introduced this bill in the Senate on March 22, 2001. Once again, it is very encouraging to see legislation of such substance and importance begin its parliamentary journey here in the Senate. I detect a clear and positive trend developing.

At the time of introduction, the minister of National Revenue, the Honourable Martin Cauchon, proudly declared to the media that:

Bill S-23 represents a bold and innovative step forward in the Government's plans to modernize Canada's borders and border processing to promote Canadian competitiveness and prosperity in the world marketplace by streamlining the movement of legitimate trade and travel...

The government publicity added that the legislation would enable the Canada Customs and Revenue Agency, otherwise known as CCRA, to implement the first elements of its five-year Customs Action Plan, entitled "Investing in the Future." The legislation will also enable the CCRA to focus its enforcement

efforts more directly on high or unknown risks and on health and safety issues. The Customs Action Plan was first released April 7, 2000.

On March 27, 2001, Senator Setlakwe moved second reading of the bill, and in doing so he too praised the Customs Action Plan promising that it will lead to Canada's customs activities being more efficient and user-friendly for all Canadians. He added that the approach outlined in the action plan features a comprehensive risk management system based on three key principles. The three principles are: self-assessment, advance information, and pre-approval, all of which will be supported by state of the art technology.

These are all laudable initiatives, honourable senators, and the customs self-assessment program the CSA has excellent potential, although I do question whether it will have the extensive application the government suggests. I will develop this theme later in my remarks.

During the government's consultations with the trade community on Bill S-23, self-assessment was identified by the industry as by far the most urgent and popular of the proposed new measures. Under the CSA program, the idea is that certain approved commercial importers — that is, those not governed by other federal statutes, such as food and pharmaceutical importers — will be able to use their own business systems to meet their information reporting and revenue obligations, a complete self-assessment environment supported by audit activities. It is hoped that in consequence the CSA will streamline a goodly portion, although not all by far, of Canada's customs clearance process, thus bringing greater speed and certainty to the importing of certain designated goods into Canada.

• (1430)

As I understand it, honourable senators, this new customs clearance system has been designed to permit CCRA officials to obtain as much information as possible in advance of the arrival of people and goods at our borders, thus allowing customs officers to make informed decisions well before the arrival of such people and products at the border, thus expediting their quick and legitimate flow into Canada.

Honourable senators, so far so good. I share the enthusiasm of the minister and of his officials and of Senator Setlakwe for the elements and philosophy underlying Bill S-23, those which they have highlighted and spoken about in such glowing terms. Indeed, as an ardent supporter of the Right Honourable Brian Mulroney's government, which in the face of determined and often strident and largely misguided opposition brought free trade to Canada, I am naturally delighted to see Liberals, members of the present government, now embracing free trade in all its aspects. The Liberal government is introducing measures to facilitate the legitimate movement of goods and people across our borders, especially in cooperation with the U.S.A., Mexico and now, apparently, with all the democratic nations in the western hemisphere.



Many elements of Bill S-23 are definitely positive in this regard, as they hopefully will have the effect of creating more open borders by allowing low-risk travellers and businesses to access markets, products and services with greater ease than at present and in a much more efficient manner.

However, honourable senators, it is the rest of Bill S-23 that concerns me. I submit that it should concern us all. I refer to those provisions that received little or no mention in the government's promotional materials or in Senator Setlakwe's remarks in this chamber. These provisions in fact constitute the vast majority of Bill S-23 — by far. Actually, only a very small portion of the bill deals with streamlining the customs processes at Canada's borders, whereas the bulk of the bill — 62 of its 102 pages — deals with codifying severe penalties for contraventions, creating or providing seemingly extraordinary and disturbing powers for relatively low-level CCRA officers, expanding the collection provisions and enabling the enactment of a burdensome system of new regulations at a time when we are all advocating caution and moderation in the trend to rule by regulation.

Honourable senators, I approve of this bill in principle. On its face, it is excellent legislation and an integral part of the government's ongoing Customs Action Plan to streamline and modernize our customs procedures consistent with the free trade environment in which we live today. At the same time, however, I must emphasize that there are many elements of Bill S-23 which are worrisome and require further study and investigation in committee.

In preparing this second reading speech, my staff and I conducted our own preliminary investigation. It immediately became evident to us that the bill involves much more than meets the eye or was apparent from the government's "puffy" press releases and from the "feel-good" remarks of Senator Setlakwe.

We have discussed the bill and its potentially far-reaching regulatory powers with departmental officials — who I might add were very cooperative and sanguine in their comments to us — as well as with legal counsel specializing in customs and trade law here in Ottawa and in Montreal. As a result, I am able to outline a number of areas of concern that need to be followed up on in committee.

For one thing, the officials are still working on the regulatory framework in which the bill, as a finished product, will operate. We do not know what those regulations will ultimately say. We need to hear from these officials, get their explanations on the record and make known to them those issues that are of particular concern to us, to Canadian importers and their commercial associates, as well as Canadians at large.

We should also listen to expert witnesses from organizations such as the Canadian Grocers' Association, the Canadian Importers Association, the Canadian Bar Association and the Canadian Institute of Chartered Accountants. What do they think

of the new regime, in particular those substantive provisions which are not apparent in the body of the bill itself? What do they think about the proposed Administrative Monetary Penalty System, or AMPS, and the extensive new collections system?

There are legitimate concerns in these areas. Many of the initiatives that will be made possible by the bill will be implemented by "prescribed conditions" set out in regulations. The officials assure us that they have developed a fairness policy to govern their application of the new procedures, including the drafting and interpretation of regulations to be enacted pursuant to the bill. They assure us that all applicable regulations are being developed in close consultation with the stakeholders.

This is comforting, honourable senators, but I believe both officials and a good cross-section of the said stakeholders should and would like to be heard on the key issues of concern, including certain proposed new and extraordinary powers of customs officers, penalties, collection procedures, the proposed system of redress and a variety of possibly other troubling privacy issues.

Honourable senators, more than half of Bill S-23 is devoted to collection provisions, which are found in Part V of the bill. I believe that much scrutiny is essential in this part of the bill. The government has indicated that these amendments are required to "harmonize" the collection provisions of the Customs Act with the collection provisions of the Income Tax Act and the Excise Tax Act. However, I have been recently advised that there may be elements of the bill's collection provisions which do not jibe with and in fact go much further than those in either of these other two acts.

Accordingly, when Bill S-23 goes to committee, the proposed new collection procedures certainly are one area where particular attention is warranted. Should the proposed provisions prove to be substantially more severe, we may well need to ask at what point in the future will the government see fit to proclaim the need to update other acts so as to "harmonize them with this legislation."

Honourable senators, I suggest this is one of those delicate areas in which we must be particularly vigilant to ensure a fair balance is struck between the government needs for funding and the legitimate rights of the citizens of Canada.

Other harsh provisions that will become law pursuant to the passage of this bill are being justified on the basis of alleged requirements of Statistics Canada for the filing by or on behalf of importers and exporters of absolutely exact and precise data on the nature and technical description of imported goods and their trading volumes. The CCRA officials have codified some 141 proposed contraventions for their AMPS program. Is it really fair or appropriate to subject an importer, perhaps a relatively small business, to onerous fines ranging from \$1,000 to \$25,000, or even a prison term of up to six months, for what may well be clerical errors by other parties in shipping



documents prepared on their behalf? Once fined, is it fair and reasonable that the money is payable up front, subject to a system of redress which could be so costly and cumbersome that, in some cases, it possibly could put small operators out of business? Answers to such questions and a full understanding of the process is surely necessary before this bill can be finally enacted.

Perhaps, honourable senators, I should back up for just a moment and describe more fully the exact nature of the Administrative Monetary Penalty System. AMPS are monetary penalties that, unlike fines, may be assessed by government officers against a person without a trial or without a judicial process or a finding of guilt. Administrative monetary penalties are not new; they are already provided for in a variety of federal statutes, at least 19 others that I could find. This bill will allow, however, for a more severe system of administrative monetary penalties than any of the other acts. Only the administrative monetary penalties set out in regulations associated with the Transport Act come close to the severity of the proposed customs AMPS where penalties can be as high as \$25,000 for both corporations and individuals.

As well, honourable senators, these administrative monetary penalties may be applied in addition to the seizure and the forfeiture of the goods in question. How or whether they would apply in cases where the same conduct could be the subject of both an AMP and a prosecutable offence is not clear to me. Currently, some of the offence provisions of the act cover different violations from those dealt with by the AMPS. This lack of clarity and possible overlap should not be left up to the minister or the Governor in Council but, rather, should be addressed by experts in committee.

• (1440)

Honourable senators, an additional concern relating to AMPS is with the application of the program and the unbridled discretion that customs officers may have in assessing possible contraventions and in imposing penalties. Bill S-23 will permit the minister or a designated officer to waive or amend penalties. CCRA officials have given assurances that a degree of standardization in the application of the system will be adopted. However, the draft wording, as it currently exists, seems to me, possibly, to provide a dangerous amount of discretion to relatively low-level customs officers.

Before leaving AMPS and turning to other concerns, I want to sensitize honourable senators to the presumption of guilt, not the presumption of innocence, which is inherent in the proposed, as well as the current, penalties that are administered by the CCRA. Those individuals and corporations that are penalized are required to pay upon assessment, irrespective of whether they appeal the decision to levy said penalty. Under such a system, there may be a strong potential for small firms to find themselves bankrupt before an appeal makes its way through the adjudication division of the customs agency. At that point, even if a decision is made in the firm's favour, major damage could well have already been done.

Honourable senators, I believe that there are shortcomings with another aspect of Bill S-23. The Customs Self Assessment, CSA, program, which I described, is one of the innovative components of the bill in that it will allow Canadian importers to send their import statistics and necessary payments to customs officials on a monthly basis, using their own reporting systems, rather than on the current transaction-based system through brokers at the border as the goods come in.

Under the current system, a carrier must stop at the Canadian border and present documentation on each load of imports. This is time consuming and it clogs up our borders. Streamlining this process is timely and vital. However, Bill S-23's CSA program will, as I now understand it, apply to less than 50 per cent of goods coming into Canada.

As I mentioned previously, honourable senators, goods that are regulated by another act of Parliament will not be eligible for this bill's CSA program, including many food items and textiles. A large importer, a grocery chain for example, might, on any given day, bring into Canada both CSA eligible and non-eligible goods in the same truck. Under these proposals, this importer will be forced to separate those items, import them individually and bear the costs of this potentially logistical nightmare. Given these options, many large importers may well pass on the CSA altogether.

One CCRA official gave me a rosy forecast that as much as 45 per cent of total imports could be brought into Canada under the CSA program in four or five years. However, if numerous goods shipped here are not eligible, and large importers find it less costly to use the existing transaction-based system, then perhaps we may never achieve even one half of that estimate.

Honourable senators, I wonder if this is good enough. If government cannot work out an adequate solution that will provide all importers of legitimate goods with equal treatment at the border, then perhaps we should understand why, so that when the bill is studied at committee there may be alternate proposals put forth to deal with this dilemma.

Honourable senators, in closing I wish to mention several touchy customs issues that were highlighted recently in the media. The issues involve alleged breaches, or potential breaches, of privacy by customs officers opening mail and packages and carrying out so-called random checks in the name of intercepting illegal immigration documents and illicit goods. I want to be clear that these issues do not arise as a direct result of the bill before us, but Bill S-23 does indeed give us a legitimate opportunity to consider them. They are relevant for at least two reasons: First, Bill S-23 will expand the current right within our customs laws to open incoming mail of over 30 grams. That will be extended to outgoing mail as well, pursuant to this bill. Second, the Privacy Commissioner, Mr. George Radwanski, has recently studied the current situation. Although he admits that nothing strictly illegal has transpired in the opening of the mail and parcels, the Privacy Commissioner concluded that he found "aspects of it to be wrong from the point of view of privacy."

I understand that the Privacy Commissioner made recommendations and Minister Caplan has said that she will consider his proposed remedy.

Honourable senators, the flavour of the situation is reflected in the following passage from page 7 of *The Globe and Mail* of Tuesday, May 1, 2001:

Immigration Minister, Elinor Caplan, defended government mail-opening practices in the Commons on Monday saying that officials look at documents but don't read them.

After both the federal and Ontario privacy commissioners lambasted what they call a disregard for privacy, Ms. Caplan told reporters she believes efforts to intercept false documents are paramount. She maintained repeatedly that government officials who open and seize envelopes or parcels look at the documents inside to determine whether they are fraudulent, but do not read them.

"They're not reading it; they're inspecting it," she said outside the House of Commons.

"My officials tell me that the customs people open it; they don't read the letter or the documents, what they do is they look to see if they have reasonable grounds to believe that it is fraudulent; then they forward it to Citizenship and Immigration Canada, my department, for examination."

Critics of the department's practice of seizing documents without warrants said they found the assertion implausible.

"It defies logic," Richard Kurland, a Vancouver immigration lawyer, said. "It's a disturbing misstatement."

"I don't see how it's possible to not read something and still get to know enough about it to send it on to Immigration."

It is my hope, honourable senators, that under the scrutiny of the appropriate Senate committee, such concerns will be studied and a balance struck between the state's need to control the possible flow of illicit items across our borders and the rights of Canadian citizens to a reasonable degree of privacy. Canadians deserve nothing less.

Honourable senators, my submission is that although Bill C-23 will go a long way towards modernizing and improving our customs procedures, it does seem, on its face, to raise issues that require serious study in committee. I support Bill S-23 in principle, and I look forward to it returning to this chamber with constructive amendments as soon as possible. To delay the streamlining of procedures at Canada's borders for low-risk,

legitimate trade would be a disservice, not only to our importers and exporters, but to all Canadians. Let us try to get it right.

**The Hon. the Speaker *pro tempore*:** Is the house ready for the question?

**Hon. Senators:** Agreed.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Robichaud, bill referred to the Standing Senate Committee on National Finance.

## BUSINESS OF THE SENATE

**Hon. Lowell Murray:** Honourable senators, if I may impose on you for just a moment, now that the motion referring Bill S-23 to the Standing Senate Committee on National Finance has passed, I wish to inform the Senate that this committee does not have any other government legislation before it at the moment. I will, therefore, convene the committee for 9:30 a.m. Tuesday next. I am assuming that the government can and will produce a minister and/or senior official for that occasion. The committee would also be free to meet on Wednesday next at 5:45 p.m. In the next few hours, I will consult with colleagues as to further meetings and witnesses who may be required.

Senator Angus has identified an impressive list of possible witnesses. I should like to have a look at that list and consult with my colleagues on the committee. I extend the warmest invitation to Senator Angus to attend the committee and help us to see our way through this legislation.

• (1450)

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I can tell Honourable Senator Murray that Minister Cauchon has indicated to me his desire to appear before the committee. I would have thought, however, that the committee would meet when the Senate rises on Tuesday. The time of 9:30 in the morning will conflict with Mr. Cauchon's cabinet meeting. Perhaps we can find a time, but I do know that he is most anxious to meet with the committee on Tuesday.

**Senator Murray:** Our normal meeting time is 9:30, which is why I specified that particular time. I hope it is possible for the minister to arrange his affairs to attend.



[Translation]

## FRENCH-LANGUAGE BROADCASTING SERVICE

INQUIRY—DEBATE ADJOURNED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Gauthier calling the attention of the Senate to the measures that should be taken to encourage and facilitate provision of and access to the widest possible range of French-language broadcasting services in francophone minority communities across Canada.—(*Honourable Senator Corbin*).

**Hon. Eymard G. Corbin:** Honourable senators, I decided barely three minutes ago that I would speak on Senator Gauthier's inquiry on the measures that should be taken to encourage and facilitate provision of and access to the widest possible range of French-language broadcasting services in francophone minority communities across Canada.

When I moved adjournment of the debate, I told myself that I would prepare a text based on some solid research, but after rereading Senator Gauthier's words and thinking it over carefully, I was convinced there was not much I could add to his apposite comments at the start of this debate.

I will therefore just take this occasion to support this motion with all possible vigour and all generosity of spirit. I am a product of the Canadian Francophonie, a Francophonie living in a minority position.

I have been fortunate in my personal destiny and that of my family members. I can state today that two of my three daughters who live in Ontario — two of them were born there and the other in New Brunswick — were able to not only do all their schooling from elementary to university level in their maternal — and paternal — language, but also to live in that language in their communities today. I will, however, relate to you an unfortunate incident which to my mind is very much of an anachronism, relating to the use of French in the work place. I will come back to that later, and hope I do not forget, because these are things that have to be said.

Honourable senators, Senator Gauthier wants first and foremost to give a more prominent place to the media, particularly television, in minority francophone communities. He rightly pointed out that the number of television networks keeps increasing. This is true not only in Canada but everywhere, because it is a universal phenomenon. So much so in fact that I wonder if this is necessary, considering the content of the programs of the vast majority of television networks. In my

opinion, most programs are just trash and only exist to make profits through advertising.

I have no hesitation in saying that the content and cultural messages of most of these programs are incredibly poor. Sometimes, I even wonder if we in Canada are falling into the trap.

I certainly have negative comments to make about the Canadian Broadcasting Corporation, whether it is the CBC or Radio-Canada, whose programming is inadequate in this area. I find it hard to believe that a corporation with two heads and four arms now, including the two information networks, is absolutely not fulfilling its mandate the way it should. That mandate is to reflect the profound cultural reality of our country. I regret it. I might get back to this issue in the near future.

There is no doubt that the availability of the media in francophone communities helps these communities survive. When I was young, I was fortunate enough to attend a nuns' convent where French and English were taught, and where all the other subjects were taught in English. My mother insisted on having printed matter in French at home. This may make you laugh, but such was the reality. At the time, we had a subscription to the Quebec newspaper *L'Action catholique*, which is now gone, and Moncton's *L'Évangéline*. We also read the history of religious communities, such as the *Annales de la bonne Sainte-Anne*, of St. Joseph's Oratory, and of the Cap-de-la-Madeleine. Frankly, these publications were my first experiences with the press.

• (1500)

It was not a lot, but these little publications enabled us to maintain our mother tongue. My parents made many sacrifices in order to be able to send us to institutions of learning far from home. It was with heavy hearts that we left home to take the train across the province to the Collège de Bathurst, and for others, to the Collège de Memramcook. In our community, there was no institution of learning that could guarantee the preservation of our culture.

Many parents did the same. It was thus that the francophone and Acadian committees of New Brunswick kept their heads above the waters of assimilation. It is because of simple actions like these that we are able to stand up today and say that we are French Canadians and proud of it.

Senator Gauthier is quite right to insist on the expansion of media networks to include minority committees, regardless of their location. We can no longer trot out the old excuses. Today, technology is available to all and can certainly serve minority cultural committees. I am speaking for francophones. The situation is the same for English-speaking minorities in Quebec, whether they live on the Gaspé peninsula, in the Eastern Townships, or on the North Shore of Quebec. We are counting on the federal government to support us, however.



Under the Canadian constitution, the federal government has a responsibility in this regard. It has obligations. It must promote the development of minority language communities. Television is an important tool for doing this. We could not do without it. Obviously, when Senator Gauthier asks for new services, the question of money keeps coming up. There are Canadians, even French-Canadian companies in minority communities, which, in my opinion, have the wherewithal to launch projects of this sort. Some have done so in the past.

The first independent French-language radio station in New Brunswick was set up in the town next to where I am from, Edmundston. Previously, if we wanted to hear French radio programming, we had to tune in to CHNC New Carlisle, in the Gaspé, on the other side of Chaleur Bay. We could get it only early in the morning or late at night, because of interference. There was no French-language radio in New Brunswick. Private interests, the Brillant family in Rimouski and the Michaud family of New Brunswick, launched this initiative. It took epic battles to have Radio-Canada radio network repeater stations in certain areas of New Brunswick. Patience was vital in applying to the commission regulating radio and television licenses, as was a lot of travel and very many interventions over many years before the first television broadcast tower appeared in our region. Subsequently, over the years, the phenomenon expanded. Then came the community radio and television stations, but their broadcasting range remains rather limited, as do their sources of funding.

Honourable senators, what Senator Gauthier is seeking requires the support of not only the private sector, but of the Government of Canada. There are provinces broadminded enough to contribute to this sort of effort. I do not want to repeat what Senator Gauthier has said on requirements, you will find it in his text.

Senator Jean-Robert Gauthier is a man I admire. Knowing what he has gone through in the past few years, a person cannot help but be amazed at his desire to continue fighting for his people in Ontario and in the rest of Canada. I must say, he is a living example to us all.

Before closing, I want to speak of something personal, something that happened to a member of my family a year ago. My youngest daughter relocated to Toronto because her husband got a job there. She went through an agency to find a job for herself and she was hired because she was bilingual. She could work in French, speak in French on the telephone with clients who were mainly from Quebec, and that is why she was hired. This is what happened.

She was working for a company that was partially controlled by American interests, although management was wholly Canadian. Her performance seemed to be more than just satisfactory, so much so that she was training others. A while after she was hired, a manager arrived in the area in which she

worked and heard her speaking French with a Franco-Ontarian employee. He said:

[English]

"What in the world is going on here? There will be no French in this office."

[Translation]

The supervisor was given orders that French was no longer to be tolerated in the office. At first, my daughter thought this was a joke, but no. She spoke with her supervisor who confirmed that the manager was serious about it.

• (1510)

From then on, French would no longer be spoken in the office, even though she had been hired to deal with French-speaking clientele across the country. She said that was intolerable and that she would continue to speak French with those of her colleagues who spoke it. This is what she did, and they fired her.

My daughter and her husband considered initiating proceedings. They paid a call on the department that looks after Franco-Ontarian affairs at Queen's Park, where they were told it could do nothing for them.

**The Hon. the Speaker *pro tempore*:** I am sorry to interrupt you, Senator Corbin, but your speaking time has expired. Are you seeking leave to continue?

**Senator Corbin:** Yes, for just another minute more.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Corbin:** I simply said: "You are young, you are determined to get ahead. Find yourself another job, but be very sure you will be able to work and live in French, as you want to in this country and this province." And so she did. She now works for another company. She speaks French when she wants and she is very happy.

This anecdote shows, honourable senators, that it is not easy to be a French Canadian in this country. The tools Senator Gauthier is proposing are vital, not only for the survival of the francophone community several hundreds of years old, but also for the development, among our fellow citizens, of an atmosphere of tolerance. The day tolerance ends will be the day to put the key in the door of the country.

I sincerely believe that we can live together. When we provide something for ourselves, we do not take something away from others. This way, everyone benefits.

**Hon. Joan Fraser:** Honourable senators, I was horrified and shocked by the story Senator Corbin has just related, but, unfortunately, not surprised. Linguistic prejudice exists. I suggest the honourable senator send a copy of the issue of the *Debates of the Senate* that includes his speech — with my brief commentary — to the president of the company in question. It would be a lesson on what it means to be Canadian.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I should like to add that I, too, am shocked by this attitude. I suggest that a complaint be filed with the Ontario Human Rights Commission. This is a *prima facie* case of discrimination. If we prevented a worker from another linguistic group to speak his or her language, for example Swahili or any other language that is not an official language in the country, the Human Rights Commission would look into the matter on the ground of ethnic discrimination. *Mutatis mutandis*, the type of discrimination that the honourable senator described is not acceptable in Canada. It is totally contrary to Ontario's human rights principles.

**Senator Corbin:** I should like to respond to the comments made by Senator Fraser and Senator Kinsella. I must admit that I did consider asking my daughter to file a complaint with the Commissioner of Official Languages, even though this is not, strictly speaking, his responsibility. As a senator, I did not want, given my privileged position, to get involved in this issue. I left it up to my daughter to decide whether or not she wanted to follow up on this incident. She and her husband decided not to pursue the matter. We will continue to assert ourselves. Perhaps attitudes will change over time. I do not know whether or not I will send a copy of my speech to the company, but I will tell my daughter about Senator Kinsella's suggestion and she will make the decision. This is the best way to proceed. I do not want to be involved in this issue as a senator. I do not want the matter to get out of the personal context. I do not want to initiate a major political debate. All I am asking for is justice.

On motion of Senator Kinsella, debate adjourned.

## SITUATION OF OFFICIAL LANGUAGES IN ONTARIO

### INQUIRY

**Hon. Jean-Robert Gauthier** rose pursuant to notice of February 6, 2001:

That he will call the attention of the Senate to current issues involving official languages in Ontario.

He said: Honourable senators, I should like to say a few words about the situation of francophones in Ontario.

As you know, there could well be some 15 or 16 topics I would like to address here, ranging from manpower training to health and the bilingual status of the capital of Canada. There is no lack of material.

I will start by speaking about the nation's capital, Ottawa, and the need for it to be officially bilingual.

• (1520)

I will then address training in French at colleges in Ontario, an important subject for young Franco-Ontarians. If time allows after that, I will move on to the delivery of health care in French in Ontario, and lastly I will address TFO — Ontario's French-language educational television channel — and its difficulty broadcasting into Quebec.

Let us start with the City of Ottawa. The linguistic future of the City of Ottawa is of interest to all Canadians and since January 1, 2001, the new City of Ottawa has had new council members, as it has become a megacity comprised of 11 municipalities.

This new Ottawa is the fourth largest city in the country and has a population of some 800,000 persons, 125,000 of those with French as their mother tongue. These are good reasons for French and English to have equal rights and privileges.

Honourable senators will agree with me that the linguistic image projected by our capital must reflect that of the country. Canada's linguistic duality, enshrined in the Canadian Constitution, must also prevail in its capital. In my opinion, this is only common sense.

On December 16, 1999, the Senate passed a motion calling on the Province of Ontario to declare the new City of Ottawa officially bilingual. This motion, which I moved, was seconded by Senator Kinsella and agreed to unanimously.

However, the provincial government did not follow up on this proposal, saying that the new municipal administration would be responsible for taking a decision in this regard. Again last week the Premier of Ontario, Mike Harris, was in Ottawa and he said that this issue did not concern him and that the City of Ottawa would make a decision.

Today, I sent a letter to all the Ottawa newspapers informing them that Premier Harris had been less than honest in saying that it was up to the city to decide what it would do regarding the country's official languages.

Honourable senators, it is up to the Province of Ontario to take such a decision. In 1986, the Ontario Superior Court ruled that a municipality in Ontario did not have the authority to declare itself officially bilingual and that this was not something that was covered by the Municipal Act.

Only the Province of Ontario may designate a city bilingual. Kapuskasing in Northern Ontario tried to declare itself officially bilingual. Someone took them to court and they lost. Based on a declaration that everyone will understand, only the Province of Ontario may declare a city, which is a provincial creation, to be officially bilingual.



I found it somewhat disagreeable, not to say dishonest, to hear it said that the city will take a decision, when the premier knows very well that it may not. Yes, it may pass bylaws dealing with services during the period of its mandate, but as soon as there is another municipal election in Ottawa, the new council will be able to change the policy.

Since this issue comes up every time there is an election, why not designate the nation's capital an officially bilingual capital, where French and English are equal and where Canadians who visit will be able to obtain services in both official languages?

If the country has two official languages, it would seem essential that the capital be able to reflect this reality and this identity.

[English]

Knowing that the Ontario Municipal Act does not grant to a municipality the power to declare itself officially bilingual, the Government of Ontario is less than forthcoming in passing the buck to the new council elected in the fall of 2000. As I told you, in a decision of the Ontario High Court of Justice in October 1986, the Court of Appeal ruled that a bylaw designating a town as officially bilingual, designating French and English as official languages and providing for equality of status of both languages, is *ultra vires* because it is beyond the powers granted to municipalities under the Municipal Act, RSO 1980, chapter 302.

I cannot be more specific than that.

Therefore, under the Ontario Municipal Act only the provincial government has the power to declare the City of Ottawa, the national capital, officially bilingual. I strongly believe that Ottawa, the Capital of Canada, should be officially bilingual. The City of Ottawa must provide that the two official languages of our country have equality of status, rights and privileges in the nation's capital.

One may ask what it means to be officially bilingual. That question is asked today in all the newspapers in Ottawa. Does it refer to a federal policy? No, it does not. I looked in the dictionary. The word "official" simply means "derived from authority" — that is the province — "duly sanctioned" — that is the province — "prescribed, authorized" — by the province, et cetera.

The debate on this matter is imminent. The decision will be taken within a week. We all know that it could be divisive and difficult. Some of us will have to argue again and again the need for the capital of our country to reflect and respect fully the two official languages of Canada.

As we all know, municipalities in Canada, according to our Constitution, are provincial creatures. Our Constitution has provisions for linguistic equality that may apply to the nation's capital. If there is difficulty in having that concept accepted and put into law, we may have to look to the federal level for help.

[Translation]

Honourable senators, I should like to discuss a matter concerning training in French in Ontario colleges. I spoke of this today during Senators' Statements, and I should like to add to it.

If we want our young people to assume their place in our community and remain competitive, we have to understand they need training. In Ontario, there are four post-secondary colleges. There is the Collège de technologie agricole d'Alfred, the Cité collégiale, here in Ottawa, which has some 6,000 students, the Collège Boréal in the North of the province and the Collège des Grand-Lacs in Toronto.

These four colleges approached the Department of Human Resources Canada to get the department to provide more tangible support for their efforts to provide training in French at their institutions.

In 1996, Parliament passed the Employment Insurance Act, which provides for the federal government to withdraw from the purchase of training in blocks as of 1999 and where the client — the student — has to assume part of the cost of his or her training.

When this legislation was passed, the Cité collégiale had a good number of programs it had developed since it was opened in 1990. It has existed for ten years, and, before it, there was no post-secondary French-language college in Ontario.

You will see why I am concerned. I am concerned because the number of students in post-secondary institutions is continually shrinking, because there is no agreement between Ontario and Canada on manpower training.

In Parliament, as elsewhere, the subject has been discussed many times. The federal government has agreed to transfer the obligation to the provinces, and Ontario has said it did not want it. What is happening at the moment? Francophones, who otherwise received assistance under the federal government training program, now no longer have access to the funds designated for educating francophones in Ontario.

What is happening is very simple. In the past, the federal government bought blocks in colleges where training was provided. This is no longer the case. Now, the individual receives a contribution and decides how the contribution will be spent. There is therefore a serious problem.

• (1530)

Post-secondary colleges must necessarily have a critical mass of students to provide training in various disciplines, whether it is mechanics, computers or other fields. Here is a typical example. I need stenotypists. Currently, in the Francophonie, there is only one school that trains stenotypists and it will close in the fall, since the only person responsible for that training is retiring. This means that there will not be any training in French available for stenotypists, and heaven knows that there is a demand to do subtitles for television programs and many other jobs. The whole issue is to make communication accessible to all.



Only twelve persons in Canada are qualified to do stenotype work for subtitles in French. There is a problem, in my opinion. I asked the Cité collégiale to provide training in stenotype. I was told that the college does not have the critical mass required to do that. They cannot provide the training because they do not have the money to do so and they no longer have the "federal block" that they used to have. It is the students who are asking for it. It is much simpler for students to take a stenotype course in English in Toronto, in Edmonton, or in British Columbia, than to take it in French. Training in French will no longer exist this fall.

However, I am told that there is a possibility. Last week, I spoke to the Honourable Jane Stewart, Minister of Human Resources Development. I told her that we have a serious problem. She was supportive of the idea, but she asked me to give her solutions. She told me she could not provide solutions, because Ontario refuses to sign agreements with the federal government.

Without agreements, there cannot be any assistance. It is a vicious circle: no agreement, no support; no support, no students; no students, no courses; and so on.

It becomes irritating to keep being told "where numbers warrant." If numbers warrant, go ahead and offer the course! Yes, but we do not have the means to offer the course; for reasons of logistics and location, we do not have the necessary funding. The colleges are really facing a serious problem.

Honourable senators, in 1997-98, there were over 360 students in the automotive mechanics program of the Cité collégiale d'Ottawa. Today, there are only 91. Why? Because it is easier for a student living in Ottawa or in Eastern Ontario who is interested in this field to take the course in English at Algonquin College than to enrol at the Cité collégiale, which does not have the required number of students. The number is continually dropping. This is true for all disciplines. It is not that we do not have the students, but that we do not have the means. It is not complicated.

It is extremely frustrating to see that, because a province decides not to sign an agreement with the federal government, students get short shrift. They are the ones suffering, and training is lacking as well.

How is one to survive in a Canada with so many inequalities? It is difficult. I will move on to another topic.

**The Hon. the Speaker pro tempore:** I am sorry, Senator Gauthier, but your time is up. Are you seeking leave to continue?

**Senator Gauthier:** Honourable senators, I have finished.

**Hon. Eymard G. Corbin:** Honourable senators, I first wish to put a question to Senator Gauthier. I will then give my speech.

**The Hon. the Speaker pro tempore:** Honourable Senator Gauthier, would you take a question from Senator Corbin?

**Senator Gauthier:** Yes.

**Senator Corbin:** I wish to thank the honourable senator and congratulate him on his speech which was, as usual, inspirational. As far as bilingualism and the capital region are concerned, does he know whether, on the other side of the river that is Hull, Gatineau, Aylmer and the little communities included in the National Capital Region, public opinion has already been polled to find out whether the Quebec part of the NCR would be prepared to create a full range of bilingual services on both sides of the Ottawa River?

**Senator Gauthier:** I thank Senator Corbin for his most apposite question. The National Capital Region was created in 1959 by the Right Honourable John Diefenbaker, with the consent of all of the provinces. It is administered by a federal institution, the National Capital Commission. It is therefore subject to the Official Languages Act.

Within the territory of the National Capital Region, both official languages are used in accordance with the Official Languages Act. The municipalities being provincial creations they are not subject to that act.

The cities of Ottawa and Hull are located in two separate provinces. They are each governed by their own provincial authorities, not the federal authorities. They are therefore not obliged to respect the federal government's Official Language Act. The City of Ottawa always has, as has Hull, but there is no obligation.

I should like to see the Ontario legislation creating the new City of Ottawa amended to require the Province of Ontario to assume its responsibilities and to declare the national capital, Ottawa, which comes under provincial jurisdiction, an officially bilingual city.

I am sure that the national capital, which extends over more than 1,800 square miles, encompasses many municipalities under provincial jurisdiction from Poltimore to Stittsville and all the way in between. These are unilingual English or unilingual French, yet signage, information and public services should be provided in both official languages, as they should in the national capital region.

• (1540)

**Senator Corbin:** The issue of bilingualism in Canada's National Capital Region is one which extends beyond the opinions and points of view of those living there. It is the capital and the capital region of all Canadians. Furthermore, Senator Gauthier has just reminded us that the region was instituted in 1959 by the late Right Honourable John Diefenbaker, with the agreement of all the provinces and presumably of all the citizens of this country.

When I look through the Ottawa newspapers, the English ones I see the following reaction: Bilingualism at city hall in the new City of Ottawa is fine, but it is not necessary everywhere. Depending on whether people live in what used to be Orleans Nepean or Kanata, opinions diverge, sometimes widely. However, I believe that, on the whole, people are receptive to institutional bilingualism with respect to municipal services.

Where I have a problem is that this debate seems to be concentrated on the Ontario side. Philosophically, this debate concerns all Canadians. I find it anachronistic that, in this day and age, there is not enough pride in this country to leave behind these jurisdictional quarrels and squabbles.

Do we truly want to be known in North America and around the world for the principles in the Canadian Constitution? Are we truly a bilingual country? Some say that we should not step on people's toes, that the will is increasingly there.

My God! I have been listening to this debate for decades. Are we a modern nation or not? Are we an enlightened people or not? The philosophical revolution, human rights, and democracy are not recent concepts. What are we waiting for to act? I believe that the federal government should bring in legislation to declare the national capital region a bilingual region with respect to all its services.

This would have to happen on the Quebec side and in Nepean, Alta Vista, and everywhere else in this region. There are Canadians not living in this region, who would like this to happen. They want it out of a feeling of pride, of belonging. They see it as an absolute anachronism when they come to Ottawa and are not served wherever they go in their language.

A few years ago, I had an accident at the foot of Parliament Hill. I was not at fault, I hasten to add. A person went through a red light and demolished the side of my car. At the police station, where I ended up, I asked to be served in French. I had to wait for an interpreter to arrive. Notes were taken, the interpreter translated, and the policeman made notes in English. The person in the wrong appealed the decision of the police. The matter went to court. I went to court, and there was an interpreter there, too.

At least, I had a semblance of service in my language, but this is not enough. Municipal services must have employees who are truly able to provide services directly in the language required. It is unacceptable that a country as rich as Canada, a region as rich as Ottawa or Hull, cannot, with financial help or other type of support from the federal government, get this issue settled once and for all. This does not concern only the citizens of this city or of the cities across the river. It is a fundamental issue that is directed at the intelligence and the heart of all Canadians. I am looking forward to seeing this issue settled once and for all.

**The Hon. the Speaker *pro tempore*:** If no other senator wishes to speak, this inquiry is considered debated.

[English]

## TRANSPORT AND COMMUNICATIONS

COMMITTEE AUTHORIZED TO HEAR MINISTER OF TRANSPORT  
ON BUSING REGULATION

**Hon. Wilfred P. Moore,** for Senator Bacon, pursuant to notice of May 1, 2001, moved:

That the Standing Senate Committee on Transport and Communications be authorized to hear the Minister of

Transport in order to receive a briefing on busing regulations; and

That the committee report no later than September 30, 2001.

Motion agreed to.

## HUMAN RIGHTS

COMMITTEE AUTHORIZED TO PERMIT  
ELECTRONIC COVERAGE

**Hon. A. Raynell Andreychuk,** pursuant to notice of May 1, 2001, moved:

That the Standing Senate Committee on Human Rights be authorized to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings.

Motion agreed to.

COMMITTEE AUTHORIZED TO ENGAGE SERVICES

**Hon. A. Raynell Andreychuk,** pursuant to notice of May 1, 2001, moved:

That the Standing Senate Committee on Human Rights have power to engage the services of such counsel and technical, clerical, and other personnel as may be necessary for the purpose of its examination and consideration of such bills, subject-matters of bills and estimates as are referred to it.

Motion agreed to.

[Translation]

## ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Tuesday next, May 8, 2001, at 2:00 p.m.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until Tuesday, May 8, 2001, at 2 p.m.





**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
 (1st Session, 37th Parliament)  
 Thursday, May 3, 2001

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-2	An Act respecting marine liability, and to validate certain by-laws and regulations	01/01/31	01/01/31	—	—	—	01/01/31		
S-3	An Act to amend the Motor Vehicle Transport Act, 1997 and to make consequential amendments to other Acts	01/01/31	01/02/07	Transport and Communications	01/05/03	3			
S-4	A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	01/01/31	01/02/07	Legal and Constitutional Affairs	01/03/29	0 + 1 at 3rd	01/04/26		
S-5	An Act to amend the Blue Water Bridge Authority Act	01/01/31	01/02/07	Transport and Communications	01/03/01	0	01/03/12		
S-11	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts	01/02/06	01/02/21	Banking, Trade and Commerce	01/04/05	17 + 1 at 3rd	01/05/02		
S-16	An Act to amend the Proceeds of Crime (Money Laundering) Act	01/02/20	01/03/01	Banking, Trade and Commerce	01/03/22	0	01/04/04		
S-17	An Act to amend the Patent Act	01/02/20	01/03/12	Banking, Trade and Commerce	01/04/05	0	01/05/01		
S-23	An Act to amend the Customs Act and to make related amendments to other Acts	01/03/22	01/05/03	National Finance					
S-24	An Act to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence	01/03/27	01/04/05	Aboriginal Peoples					

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-2	An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations	01/04/05	01/04/24	Social Affairs, Science and Technology	01/05/03	0			
C-3	An Act to amend the Eldorado Nuclear Limited Reorganization and Divestiture Act and the Petro-Canada Public Participation Act	01/05/02							

C-4	An Act to establish a foundation to fund sustainable development technology	01/04/24	01/05/02	Energy, the Environment and Natural Resources					
C-8	An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions	01/04/03	01/04/25	Banking, Trade and Commerce					
C-9	An Act to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act	01/05/02							
C-12	An Act to amend the Judges Act and to amend another Act in consequence	01/04/24							
C-13	An Act to amend the Excise Tax Act	01/04/24	01/05/01	Banking, Trade and Commerce					
C-20	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	1/01
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	2/01

## COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
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## SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	01/01/31	01/01/31	National Finance	01/03/28	5			
S-7	An Act to amend the Broadcasting Act (Sen. Finestone, P.C.)	01/01/31	01/02/07	Transport and Communications					
S-8	An Act to maintain the principles relating to the role of the Senate as established by the Constitution of Canada (Sen. Joyal, P.C.)	01/01/31							
S-9	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	01/01/31							
S-10	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	01/01/31	01/02/08	—	—	—	01/02/08		
S-12	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	01/02/07	01/03/27	Social Affairs, Science and Technology					
S-13	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	01/02/07	01/05/02	Privileges, Standing Rules and Orders					

S-14	An Act respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day (Sen. Lynch-Staunton)	01/02/07	01/02/20	Social Affairs, Science and Technology	01/04/26	0	01/05/01
S-15	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	01/02/07	01/03/01	Energy, the Environment and Natural Resources			
S-18	An Act to Amend the Food and Drugs Act (clean drinking water) (Sen. Grafstein)	01/02/20	01/04/24	Social Affairs, Science and Technology			
S-19	An Act to amend the Canada Transportation Act (Sen. Kirby)	01/02/21					
S-20	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	01/03/12					
S-21	An Act to guarantee the human right to privacy (Sen. Finestone, P.C.)	01/03/13		Subject-matter 01/04/26 Social Affairs, Science and Technology			
S-22	An Act to provide for the recognition of the Canadian Horse as the national horse of Canada (Sen. Murray, P.C.)	01/03/21					
S-26	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	01/05/02					

## PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-25	An Act to amend the Act of incorporation of the Conference of Mennonites in Canada (Sen. Kroft)	01/03/29	01/04/04	Legal and Constitutional Affairs	01/04/26	1	01/05/02		



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CANADA

# Debates of the Senate

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1st SESSION

• 37th PARLIAMENT

• VOLUME 139

• NUMBER 33

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OFFICIAL REPORT  
(HANSARD)

Tuesday, May 8, 2001

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THE HONOURABLE DAN HAYS  
SPEAKER





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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Tuesday, May 8, 2001

The Senate met at 2 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### NATIONAL PALLIATIVE CARE WEEK

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, May 7 to 13 is National Palliative Care Week. I am both privileged and honoured to rise today in this chamber to celebrate this special event.

Honourable senators, palliative care has always been, as many of you know, of particular interest to me. With each passing year, I am pleased to witness new developments taking shape in end-of-life care.

Delivery of palliative care in our country is becoming more available. It is important to recognize that this form of end-of-life care is heavily reliant on an extensive support system of medical staff, community workers, family members and volunteers.

Honourable senators, 2001 marks the International Year of Volunteers. Few endeavours rely more heavily on the work of volunteers than does palliative care. In recognition of the hard work and tireless efforts of the volunteers who make hospice palliative care a reality, I wish to extend my heartfelt thanks. Hospice palliative care volunteers are often the people who have the most direct contact with the families and recipients of palliative care. It is not an exaggeration to say that without them any hospice palliative care program might never get off the ground. We all appreciate how irreplaceable and valuable their assistance has been to families. It is impossible to express enough gratitude for their work and their contribution to the lives of others in this, their most serious time of need. No words in any language can convey the extent of the support they provide to others. They define our most human values and remind us that the most basic and important value in life is to care for each other.

There are few people who are blessed with the death they would wish for themselves, but with good end-of-life care we can benefit from more comfort, better family ties and better medical care than we would without these efforts.

As honourable senators know, palliative care is a multidisciplinary field. It is not just a matter of medications or medical procedures. A family is affected and their needs must be attended to. We need to return to allowing people a dignified, natural death instead of treating the process of dying as something unnatural that must be fixed and avoided at all costs.

#### WORLD RED CROSS DAY

**Hon. J. Michael Forrestall:** Honourable senators, today we celebrate the lives of thousands of unselfish Canadian women and men, young and old, who have dedicated themselves to the International Red Cross.

The International Red Cross emerged out of the desire to bring assistance without discrimination to the wounded on the battlefield. Today, the battlefields are not just those in which war has torn apart people's lives, but also those in which people fight against natural disasters and environmental catastrophes.

Honourable senators, it is important to set today apart from all other days to honour the work of the Red Cross and to appreciate the efforts of Canadians who volunteer for that service. To that end, I would ask all honourable senators to remember those volunteers in their communities who have stepped forward at times of flooding, of natural disaster and of serious devastation. I think of the floods in Manitoba, the tornadoes in Guelph, the wind storms in Ottawa, the flooding in Exeter, Ontario; Sydney, Nova Scotia; and Vanguard, Saskatchewan.

As I said, across the country Red Cross volunteers have been called upon frequently. It is fitting that today we recognize the anniversary of the Red Cross and pay tribute to the 70,000 volunteers Canada-wide who assist our communities and the people within them with their generous assistance.

[Translation]

#### NATIONAL NURSING WEEK

**Hon. Lucie Pépin:** Honourable senators, May 12 will be National Nursing Day. Every year, in the month of May, nurses celebrate their individual and collective accomplishments and reflect on their situation. Alas, it remains a precarious one.

I should like to take this opportunity to pay tribute to the health professionals, who are always in the front line and whose professionalism and devotion to duty, it cannot be said often enough, make them major partners in our health care system.

The theme, "Nurses, Champions for Health," speaks volume on what the nurses want to see their national week stand for this year. They have decided to use it as an opportunity to make the public more aware of their role in health care delivery and to draw attention to the remarkable contribution Canada's nurses continue to make to the well-being of Canadians.

Over the years, the contribution of the nursing profession has undergone considerable transformation. More and more nurses now hold certificates of specialization and contribute their acquired skills as part of a specialized team. In a number of teaching or community hospitals, nurses are considered an integral part of the care delivery team, not simply secondary staff.



These few positive gains, however, do not change the fact that nurses continue to courageously shoulder a very heavy burden. They are the backbone of our health system. Without them, it would prove virtually impossible to contemplate the creation of a viable health care delivery system.

I trust that in course of the studies carried out by the Senate and the Romanow commission, considerable attention will be focussed on the nurse shortage and the reasons for it.

There is a shortage of nurses everywhere in Canada. Unless something is done to change the situation, the shortage will get worse, not only because our ageing population will be in greater need of health care, but also because large numbers of nurses will be retiring within the next decade.

• (1410)

We have to look at the alarming conditions they work under. Governments wanted to revolutionize the health care system on their backs, and now they are exhausted.

There is no magic solution to resolve the situation. Only proper working conditions, where quality and safety are promoted, will help keep existing staffs and facilitate recruitment.

We must remember that a study and a major reform of the health care delivery system are underway. The nurses must be consulted. They must be part of the reform and decision-making process. The success and viability of the health care system so dear to Canadians fall on their shoulders. Let us give them their rightful place in this process, and our health care system will be the better for it.

[English]

## THE HONOURABLE ROCH BOLDOC

### CONGRATULATIONS ON RECEIVING BELLECHASSE AWARD

**Hon. A. Raynell Andreychuk:** Honourable senators, in the year 2000, the Regional Municipality of Bellechasse County in the province of Quebec instituted a new awards program to honour prestigious residents either in their lifetime or posthumously in an effort to restore a feeling of pride and of belonging in its citizens and to develop the Bellechasse identity by ensuring radiance on a regional, national and international level. It is with great pride that I and other colleagues congratulate Senator Bolduc, who has added this prestigious award to his long list of achievements.

In June 1980, Senator Bolduc was awarded the Vanier Medal from the Canadian Institute of Public Administration for exceptional and distinguished service. In 1982, he received a medal from the Premier of Quebec. In June 1983, Concordia University admitted him as Doctor of Laws. In 1984, he became an Officer of the Order of Canada; in 1998, he became a Knight of the National Order of Quebec.

These awards, I am sure, pale in comparison to the award Senator Bolduc received this past weekend. It is always an honour to receive an award on a national level, but often the community where we are born and raised is made up of our toughest critics. It is indeed a great testimony to Senator Bolduc's distinguished public service to receive this award in Bellechasse.

**Hon. Senators:** Hear, hear!

[Translation]

## GREAT PEACE TREATY OF MONTREAL

### TRICENTENNIAL

**Hon. Aurélien Gill:** Honourable senators, I should like to recall to mind a historical event that we should all find moving. This summer, in Montreal, the signing of the peace treaty of 1701 will be commemorated.

Three hundred years ago, 39 nations converged on one location, Montreal, to discuss the conditions of a longstanding and definitive peace treaty that would end a war, which had essentially lasted a century.

Today we must recognize the vital importance of these facts in the history of Canada and North America. We will draw on this commemoration in order to recall the importance of the First Nations' contribution to our history.

Iroquois, Hurons, Montagnais, Algonquins, Potawatomis, Illinois, Miamis, Menomins, Ottawas, Shawnees, Ojibways, Sauks, Fox, to name but a few, negotiated and signed with the French of New France a peace agreement that was a turning point in history.

When we look at the events of that summer in detail, and as the commemoration of that year will surely point out to us, the First Nations acted in a sovereign fashion, according to complex diplomatic protocols and expressing definite and instructive political visions.

The Wendat leader, Kondiaronk, who died during these negotiations, distinguished himself particularly. Governor Callière agreed to these protocols, which involved long hours of paying attention out of respect for the conditions of oral presentation and in accordance with the international Aboriginal rules of diplomacy governing the sessions.

[English]

The events must have been spectacular, as they were held outdoors with the knowledge of the population. The issue was about ending the violent turmoil that had long carried on in a vast territory that includes the Great Lakes, the St. Lawrence Valley, the Laurentians north of New York State, and the upper Mississippi. It explains why all the nations were involved and the magnitude of the meeting, which contributed to the opening of a new chapter in our history.

[Translation]

The idea was to settle old disputes related to the fur trade and to wars between the Iroquois and the French, and between the First Nations themselves.

The treaty signed in Montreal in 1701 did not concern Montreal. It was a defining moment in the destiny of North America as we know it today. It was also a striking illustration of the First Nations' innovative spirit and political strength.

Let us recognize a major historical event that has a profound meaning for all Canadians, and let us try to learn something from it for our own benefit.

[English]

We were many nations and we played a significant role in history.

[Translation]

The treaty signed in Montreal in 1701 was one of the most striking examples. I remind honourable senators that the Canadian Commission for Unesco supports these commemorative events, which have a great educational and cultural value.

[English]

In short, let us not forget such an important event. We need very much to remember who all of us in this country really are. History can teach, and when it is well taught, it can change the future.

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw your attention to the presence in the gallery of members of the State Duma of the Russian Federation. They are: Elvira Ermakova, Member of Parliament and Deputy Chair of the Committee on Labour and Social Policy, and Anatoliy Golov, Member of Parliament and an expert of the Committee on Labour and Social Policy. They are a delegation visiting Canada as part of the Women and Labour Market Reform project, which is a three-year initiative of the Canadian International Development Agency managed by Carleton University. They are guests of Senator Fairbairn.

On behalf of all senators, I welcome you both to the Senate of Canada.

[Translation]

## ROUTINE PROCEEDINGS

### ADJOURNMENT

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

[ Senator Gill ]

That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, May 9, 2001, at 1:30 p.m.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

[English]

## AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET DURING  
SITTING OF THE SENATE

**Hon. Thelma J. Chalifoux:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Agriculture and Forestry have power to sit at 5:30 p.m. today even though the Senate may then be sitting and rule 95(4) be suspended in relation thereto.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

[Translation]

• (1420)

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, both sides of the Chamber reached an agreement. Committees wishing to sit at the same time as the Senate will be granted leave to do so starting at 6:00 p.m., except when very important witnesses are scheduled to appear. We considered a very important witness to be a minister.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, it is important to emphasize that the opposition agrees with Senator Robichaud's position. If the committee wishes to sit at 6:00 p.m. on Tuesdays, we agree that it should be allowed to begin its work and sit at 6:00 p.m. According to the Senate rules, the Senate must adjourn at 6:00 p.m. and resume, if necessary at 8:00 p.m. We can compromise and allow a committee to sit at 6:00 p.m. on Tuesdays.

On Wednesdays, we must be careful. Usually, we try to adjourn at 3:30 p.m. Senators will recall that, last year, when the Speaker was the Deputy Leader of the Government, he moved the adjournment motion for Wednesdays — as the Deputy Leader did earlier — and set the precise hour of the Wednesday adjournment. For instance, I know that the Standing Committee on Social Affairs, Science and Technology wants to meet Wednesday afternoon at 3:30 p.m. If the Senate sitting is not over, this committee cannot sit. It would be preferable to wait until 6:00 p.m. or, as was done last year, set the exact time of adjournment for the Wednesday sitting. We can find a solution to this problem.



However, with respect to the situation at hand, I agree with Senator Robichaud's comments.

[English]

**The Hon. the Speaker:** Honourable senators, when I asked for leave, Senator Robichaud, followed by Senator Kinsella, rose to make comments reflecting the discussion between house leaders and also putting a question to Senator Chalifoux as to why she requested this leave.

I take it from the comments that if Senator Chalifoux changed her request to allow the committee to sit at 6:00, rather than at 5:30, leave might be granted, based on what I heard the deputy leader say, unless of course, as Senator Robichaud suggested, the committee intends to hear a minister or some witness of extraordinary importance of whom they are not yet aware.

**Senator Chalifoux:** It is my understanding, honourable senators, that the Agriculture Committee will be listening to Brian Gray, Director of Conservation Programs for Ducks Unlimited, from Winnipeg. If it pleases the Senate, I would ask leave to change the motion to read 6 p.m.

**The Hon. the Speaker:** Honourable senators, is it agreed that the motion of Senator Chalifoux be varied to read, instead of 5:30 today, 6 p.m. today?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion as amended?

**Hon. Senators:** Agreed.

Motion as amended agreed to.

## FOOD AND DRUGS ACT

BILL TO AMEND—WITHDRAWAL FROM SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE AND REFERRED TO ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES COMMITTEE—NOTICE OF MOTION

**Hon. Jeremiah S. Grafstein:** Honourable senators, I give notice that tomorrow, Wednesday, May 9, 2001, I will move:

That Bill S-18, An Act to amend the Food and Drugs Act (clean drinking water), which was referred to the Standing Senate Committee on Social Affairs, Science and Technology, be withdrawn from the said Committee and referred to the Standing Senate Committee on Energy, the Environment and Natural Resources.

## HUMAN RIGHTS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY ISSUES RELATED TO HUMAN RIGHTS

**Hon. A. Raynell Andreychuk:** Honourable senators, I give notice that at the next sitting of the Senate I will move,

That the Standing Senate Committee on Human Rights be authorized to examine issues relating to human rights, and, *inter alia*, to review the machinery of government dealing with Canada's international and national human rights obligations; and

That the Committee report to the Senate no later than Wednesday, October 31, 2001.

[Translation]

## SITUATION OF OFFICIAL LANGUAGES IN ONTARIO

NOTICE OF INQUIRY

**Hon. Jean-Robert Gauthier:** Honourable senators, I give notice that, on Thursday next, May 10:

I will call the attention of the Senate to current issues involving official languages in Ontario.

[English]

## ACCESS TO CENSUS INFORMATION

PRESENTATION OF PETITION

**Hon. Lorna Milne:** Honourable senators, I have the honour today to present 1,394 signatures from Canadians in the provinces of B.C., Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Prince Edward Island, Newfoundland and Labrador, and Nova Scotia who are researching their ancestry, as well as signatures from 116 people from the United States and 17 from Great Britain who are researching their Canadian roots. A total of 1,527 people are petitioning the following:

Your petitioners call upon Parliament to take whatever steps necessary to retroactively amend Confidentiality-Privacy clauses of Statistics Acts since 1906, to allow release to the Public after a reasonable period of time, of Post 1901 Census reports starting with the 1906 Census.

So far I have now presented petitions with 9,734 signatures to the Thirty-seventh Parliament. The numbers are climbing. I have presented petitions with over 6,000 signatures to the Thirty-sixth Parliament, all calling for immediate action on this very important matter of Canadian history.



## QUESTION PERIOD

### NATIONAL DEFENCE

#### REPLACEMENT OF SEA KING HELICOPTERS—INDEPENDENT LEGAL ADVICE ON DISPUTE BETWEEN EH INDUSTRIES AND GOVERNMENT

**Hon. J. Michael Forrestall:** Honourable senators, my question is for the Leader of the Government in the Senate, following on questions that I had asked back on April 25 and 26.

The Leader of the Government in the Senate confirmed at the time that a retired justice of the Supreme Court had been retained by the government to offer independent advice on the Federal Court of Appeal's decision with regard to EH Industries and the conduct of the Maritime Helicopter Project.

Can the minister tell the chamber if it is retired Justice Charles Dubin who has been retained by the government? If not, who is the person who was retained? Would the leader tell us, at the same time, when that person was retained by the government to offer legal opinions on the Maritime Helicopter Project?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as always, the information to which the senator refers is accurate. Yes, he does have the justice's name correct. As to when exactly the announcement and the appointment were made, I must get back to him.

#### REPLACEMENT OF SEA KING HELICOPTERS—SPLITTING OF PROCUREMENT PROCESS

**Hon. J. Michael Forrestall:** Honourable senators, on a related but somewhat parallel subject, I was some what perplexed by the leader's answer to an oral question on April 25. She stated that the Maritime Helicopter Project was split into two so that Canadian companies could compete.

As you know, Sikorsky is American; Eurocopter is French; Westland/Augusta is British-Italian; Lockheed Martin is American; Boeing is American. I could go through all the names of those involved in the helicopter project.

• (1430)

The only company that seemingly fits the leader's description of a Canadian company is Canadian Marconi, now BAE Systems Canada Limited. BAE Systems was bought largely by a firm known as ONCAP in February of 2001, ONCAP being a subsidiary of Onex Corporation of Mr. Schwartz' fame.

My question for the minister is this: Which Canadian company was the Maritime Helicopter Project split in two in order to aid? Was it split to aid Onex in the competition?

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his question. As I explained in earlier questions, the contract has essentially been divided

between the airframe — that is, the basic helicopter, for which he is correct that there are no Canadian companies — and the integrated missions system, for which there are many companies in Canada. Some may include Thalix, Loughheed Martin, Boeing Raytheon, Computing Devices Canada, Litton Systems, BAE Systems and most other helicopter manufacturers.

**Senator Forrestall:** Surely, honourable senators, the Leader of the Government is not suggesting to me or to any other Canadian that the companies she has just mentioned are in fact Canadian companies. I asked about Canadian companies. She will understand "Canadian" in the sense of Computing Devices Canada being a Canadian company. Who is the splitting in aid of? Is it Onex? If the minister does not have an answer, that is fine. However, sooner or later I will plod my way to the weary end of this matter, not to my dissatisfaction but to the government's embarrassment.

**Senator Carstairs:** The honourable senator and I can have a debate on semantics as to whether these companies are 100 per cent Canadian owned or whether they are companies that operate in Canada. Many companies in Canada could, in fact, bid on the second part of the contract, the integrated missions system. As to the other part, the airframe, the basic helicopter, my understanding is there are no companies either Canadian owned or located in Canada.

**Senator Forrestall:** Then, of course, the final question is Who will be the prime contractor?

**Senator Carstairs:** There will be two contractors, one for the aspect of the airframe and one for the aspect of the integrated missions system.

**Senator Forrestall:** Who will be the prime contractor?

[Translation]

### AUDITOR GENERAL

#### APPOINTMENT PROCESS

**Hon. Roch Bolduc:** Honourable senators, my question is for the Leader of the Government in the Senate.

Sheila Fraser has been appointed Acting Auditor General. Could the leader provide a few explanations with respect to the process of appointing the Auditor General? The Auditor General is an important officer of Parliament and is one of our principal public servants, working directly with both Houses of Parliament.

[English]

**Hon. Sharon Carstairs (Leader of the Government):** I thank Honourable Senator Bolduc for his question. Before I begin, let me join with Senator Andreychuk in congratulating him on yet one more honour that is richly deserved, as have been the honours of the past.

Through the translation of the honourable senator's question, the interpreters referred to the Auditor General's compensation. I do not think that was the intent of the senator's question. I believe he wanted to know about the monies needed to adequately staff the Office of the Auditor General.

**Senator Bolduc:** My question is about the appointment process. This is one of the most important offices we have, and the Auditor General is an officer of Parliament. Actually, I believe we currently have an Auditor General. I would like a better understanding of the appointment process. This is an important job, and we should know a little more about it.

**Senator Carstairs:** I thank the honourable senator for that question. I assume he is asking when a permanent Auditor General will be appointed and what exactly that process will be. As I understand it, there is an ongoing search and competition at the present time. If I can find more details as to when the actual appointment is expected to be made, I will get back to the honourable senator.

## CAPE BRETON DEVELOPMENT CORPORATION

### REQUEST FOR UPDATE ON SALE

**Hon. John Buchanan:** Honourable senators, I have a question for the Leader of the Government in the Senate regarding the continuing saga of the Cape Breton Development Corporation.

As the leader is aware, the negotiations with the Florida company to take over the assets of Devco have totally failed. There are no negotiations at the present time. However, an offer has been made by the Cape Breton Cooperative Group, which composed of local Cape Breton citizens of every stripe, to take over the full assets of the Cape Breton Development Corporation. Could the minister give us a report as to what is going on with Devco, the offer made by the Cape Breton Cooperative Group, and if any answer has been given by the Government of Canada to that group?

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his question. My understanding is that there are negotiations with an additional company in addition to the Cape Breton Cooperative Group. When these negotiations come to a conclusion, an announcement will then be made.

**Senator Buchanan:** The minister is saying that at present two groups are negotiating with the federal government to take over the assets of the Cape Breton Development Corporation; is that correct?

**Senator Carstairs:** That is the last information that I received.

**Senator Buchanan:** Does the minister know that one of the groups is the Cape Breton Cooperative Group? Could the minister inform the members of the Senate who the second group is and where the second group is from?

**Senator Carstairs:** My understanding is that such information is confidential at the present time. However, if there is any way that I can share it with members of the Senate, I will do so.

## HUMAN RESOURCES DEVELOPMENT

### EMPLOYMENT INSURANCE ACT—RULING ON CONTRAVENTION OF CHARTER OF RIGHTS AND FREEDOMS

**Hon. Lowell Murray:** Honourable senators, last week I asked the Leader of the Government about the intentions of the government with regard to a judgment brought down by a tribunal in Winnipeg which found that the employment insurance regulations contravened the equality provisions of the Charter in that they are unfair to women. The minister at the time suggested that we canvass the issue in the Social Affairs Committee where Bill C-2 is under consideration. We tried that. The Minister of Human Resources Development was not in a position to say what the government intended to do.

Does the Leader of the Government in the Senate have more up-to-date information? I ask the question because the 30-day deadline must by now have passed or be very close to expiry. Surely, the government will have decided whether it intends to appeal to the Federal Court of Appeal or, alternatively, to take steps to change the law in accordance with the judgment of the tribunal.

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his question. Regrettably, I do not have up-to-date information, like the Minister of HRDC, but Senator Murray is correct when he says that we are getting close to the 30-day deadline. I will attempt to get the correct answer for the honourable senator.

[Translation]

## ANSWERS TO ORDER PAPER QUESTIONS TABLED

### PUBLIC SERVICE

**Hon. Fernand Robichaud (Deputy Leader of the Government)** tabled the answer to Question No. 3 on the Order Paper, by Senator Oliver.

### CUSTOMS AND REVENUE AGENCY

**Hon. Fernand Robichaud (Deputy Leader of the Government)** tabled the answer to Question No. 5 on the Order Paper, by Senator Oliver.

### HERITAGE—FOREIGN PUBLISHERS ADVERTISING SERVICES ACT

**Hon. Fernand Robichaud (Deputy Leader of the Government)** tabled the answer to Question No. 8 on the Order Paper, by Senator Lynch-Staunton.



[English]

## ORDERS OF THE DAY

### BLUE WATER BRIDGE AUTHORITY ACT

BILL TO AMEND—MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill S-5, to amend the Blue Water Bridge Authority Act, and acquainting the Senate that they have passed this bill without amendment.

[Translation]

### FEDERAL LAW-CIVIL LAW HARMONIZATION BILL, NO. 1

MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill S-4, to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law, and acquainting the Senate that they have passed this bill without amendment.

• (1440)

[English]

### EMPLOYMENT INSURANCE ACT EMPLOYMENT INSURANCE (FISHING) REGULATIONS

BILL TO AMEND—THIRD READING—MOTION IN  
AMENDMENT—VOTE DEFERRED

Hon. Jane Marie Cordy moved the third reading of Bill C-2, to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations.

She said: Honourable senators, like many Canadians, I am pleased to see this bill before the Senate for third reading. The changes introduced in this bill will strengthen the Employment Insurance system and bring about fairness and equity for all who use it.

Having said that, I also acknowledge some of the concerns that were raised at the committee stage by my colleagues on the other side. Although I do not believe the criticisms were germane to this bill, that does not mean that they are not valid concerns.

I would hope that all honourable senators will continue this debate in the future. Only through meaningful debate will

parliamentarians ensure that this important public policy remains fair and equitable for all Canadians. The government is committed to monitoring and assessing the impact of the Employment Insurance bill until 2006.

Hon. Lowell Murray: Honourable senators, I do not know that I can quite match my honourable friend for the brevity of his presentation, but I will make an effort not to be as long today as I was when I spoke at second reading on this bill.

I intend to propose, on behalf of Her Majesty's Loyal Opposition, an amendment to this bill at third reading. In order that honourable senators are not held in suspense, the effect of the amendment would be to delete clause 9 of the bill.

Honourable senators spent one day on this bill at second reading. There was one speech from either side of the chamber which was entirely appropriate for the bill. We then went to the Standing Senate Committee on Social Affairs, Science and Technology, where we also spent one day hearing testimony. I am always somewhat uneasy about trying to deal with a bill on an important subject, which this is, in the course of one committee meeting. Nevertheless, we did put in a good three hours under Senator Kirby's chairmanship last Wednesday night. We heard from four witnesses who, unlike the 60-odd intervenors before the House of Commons committee, actually spoke mostly about the bill. The witnesses before the Commons committee spoke mostly about the need for a more thorough reform of the Employment Insurance regime. While I agree that the need for reform is great and urgent, and while I spoke to those issues at some length at second reading, they are issues that can only be addressed in the future.

Nevertheless, even after the bill had passed through the House of Commons, representatives from the Barreau du Québec wanted us to know of their concerns with at least one provision of Bill C-2 and three other provisions of the EI law as it stands. I will say a word or two about their representations now.

[Translation]

I received that letter the day after the only meeting that our committee had on this bill. I assume that other members of the committee also received it.

This letter, dated May 1, 2001, is from the Quebec Bar Association and is addressed to the Minister of Human Resources Development. Since it was too late to invite Bar officials to appear before the committee, I thought I should briefly tell you about the concerns expressed in that letter.

The letter is signed by the leader of the Bar, Ronald Montcalm Q.C., and states that the Bar supports the analysis made by the Auditor General of Canada on the surpluses in the employment insurance account and on clause 9 of Bill C-2. It asks Parliament to correct certain other problems or injustices in the Employment Insurance program.



First, the Bar Association reminds us that, since 1993, it has been opposed to the total exclusion of workers who "voluntarily" quit their job. Before 1993, the jurisprudence had established a distinction between a worker who "quits with just cause" and a justification under the act. According to the Bar, there are situations where an employee has shown just cause for voluntarily quitting his or her job, rather than a justification under the act, and the idea was to impose a minimal penalty.

Similarly, in connection with dismissal, the penalty change makes it possible to acknowledge extenuating circumstances relating to the worker's misconduct.

It is hoped that such acknowledgement of the extenuating circumstances relating to the voluntary departure or dismissal (of the worker) will be reinstated in the legislation...

The Bar deems section 5(2)(i) and (3) of the present legislation discriminatory and calls for its abrogation. According to this section, a person working in a family business must prove that his or her conditions of employment are the same as for an outsider, or else is ineligible for employment insurance.

Lastly, the Bar believes that making the conditions for eligibility for employment insurance more stringent in cases where there has been a violation of the law should be reviewed. In particular, it feels that the notice of violation should be appealable, and that the various appeal levels should be empowered to quash a notice of violation or reduce it to a mere warning, as the evidence dictates.

That is the end of the concerns expressed by the Quebec Bar Association.

• (1450)

[English]

With regard to the amendment to delete clause 9, to which I spoke earlier, I believe that the committee's report on the bill, tabled here last Thursday by the committee's deputy chairman, Senator LeBreton, states very succinctly the background to this amendment. Clause 9 effectively suspends for two years the operation of section 66 of the Employment Insurance Act. Thus, it would, as the committee's report says:

...circumvent the premium rate-setting objectives outlined in section 66 of the Employment Insurance Act which require the premium rate to be set annually so as to ensure that there is enough revenue over a business cycle to cover the costs of Employment Insurance and to ensure that the premium rate is relatively stable over the same period.

Therefore, clause 9 of this bill would circumvent the criteria by which the premium rate is supposed to be set. It would also

circumvent the process set out in section 66 of the EI Act whereby the Employment Insurance Commission, which consists of representatives of labour, management and the government, sets the rate in accordance with the criteria I have just quoted, subject to cabinet approval.

Honourable senators, there is no doubt that if that process were to remain in place for the years 2002-2003 there would be a significant reduction in premiums. It is, in fact, inconceivable that the commission could recommend otherwise given the criteria set out in section 66 that I have just quoted. The chief actuary of the account says that \$10 billion to \$15 billion would be a sufficient reserve to guarantee the stability of premium rates through a business cycle including an economic downturn. The surplus at present is \$36 billion, heading for \$43 billion next March 31, three to four times what the chief actuary says is needed.

As for premiums, the chief actuary said that for 2001 there would be little risk of setting a rate of 2.10 per cent per \$100 of earnings and that it is likely that a rate as low as 1.75 per cent could also be set for 2001 and kept for the indefinite future. Although this rate would contain a smaller margin of safety, the current surplus would make it a reasonable option. I observe simply that the present rate is 2.25 per cent per \$100 of earnings.

At the committee hearings, the Acting Auditor General, Sheila Fraser, repeated the observation of her predecessor, Denis Desautels, to the effect that at the present level of the EI surplus she would be hard-pressed to conclude that the intent of the law is being respected. Instead of applying the law, the government, through clause 9, is suspending the law in order to avoid the premium reduction that is indicated.

At the committee the witnesses, except for the Minister of Human Resources Development herself, were unanimous in condemning clause 9. In addition to the Acting Auditor General, we also heard from the Canadian Restaurant and Food Services Association and the Canadian Labour Congress.

The minister's defence is that "a review of the premium setting mechanism" is needed, that it will take place over the next two years driven, she told us — although that was not her word — by the Department of Finance, and meanwhile, "to ensure predictability and stability in premiums," the EI Commission will be cut out of the process and the cabinet alone will set the rate.

The need for a review of how rates are set is not at issue here. It has been emphasized by, among others, the House of Commons Standing Committee on Finance and by the Auditor General. The Acting Auditor General stated that the result of the review should be a process of greater transparency, due process and clear reference points. She added that such reference points "are necessary to ensure the fiscal integrity of the EI program."

Honourable senators, the problem is not that a review of the rate setting mechanism is to take place. I think we all agree that such a review is necessary. Suspending the process, however, is not necessary. What is the problem with simultaneously conducting a review while respecting section 66 of the act? The answer is that there is no problem with allowing the Employment Insurance Commission to continue to recommend the rate to the Governor in Council based on the criteria. What is happening here is that the government is suspending the process in order to prevent the decrease in premiums which is required by law, is demanded by fairness, and is long overdue.

It is somewhat ironic that we should be debating the issue and this section of the bill, which is so manifestly driven by the Department of Finance, a couple of days after the *Ottawa Citizen*, in a column by Lawrence Martin, trumpeted the great democratic reforms, including decentralization and diffusion of power, that will be promoted by Paul Martin in the coming Liberal leadership campaign.

Honourable senators, in that spirit, here is an opportunity for us at once to stay Paul Martin's hand from the neutering of the EI Commission and to strike a blow for participatory democracy by leaving this tripartite process in place. I am sure that the temptation will be irresistible for at least some honourable senators opposite.

#### MOTION IN AMENDMENT

**Hon. Lowell Murray:** Honourable senators, I move, seconded by the Honourable Senator Stratton:

That Bill C-2 be not now read a third time but that it be amended in clause 9 on page 4 by deleting lines 14 to 20.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the amendment?

**Hon. Terry Stratton:** Honourable senators, I rise to speak in support of Senator Murray's amendment to delete clause 9 of Bill C-2. Clause 9 proposes to give cabinet the unilateral power to set EI premiums for the next two years.

• (1500)

The amount of money in the EI account would not matter. Premiums will be paid based on whatever premium the Minister of Finance decides. EI premiums are a tax on working Canadians and those who employ them. They are supposed to cover the costs of paying benefits to those who are legitimately out of work. They were not intended to be another tax that finds its way into general revenues or a tax to pay for some of the HRDC fiascos that we have seen in recent years.

Why do we have clause 9? If you listen to the HRDC minister, it is because the current law needs to be suspended for two years while the government reviews the way in which premiums are set.

What does the current law say? First, it says that the rates are to be set by the EI Commission on the approval of cabinet and with the recommendations of the ministers of HRDC and Finance.

Honourable senators, the EI Commission includes representatives of business and labour. Clause 9 not only enforces whatever safeguards did exist, but it also removes any say in what the premiums will be from those who pay them. EI premiums are not just another tax. They are supposed to be tied to benefits. That is the reason that we have the EI Commission.

Second, clause 9 suspends the need to look at any criteria when rates are set. The guidelines currently set out in law for the commission are fairly straightforward. There must be enough money to cover the program's costs, and the premium rates should be relatively stable over a business cycle.

Honourable senators, the program actuary tells us that these criteria would be met and a surplus of \$10 billion to \$15 billion would be created. The surplus on March 31, 2001, was \$36 billion, more than twice the amount needed. The Auditor General has looked at this and has said that he would be hard pressed to say that the current law is being respected.

That, honourable senators, is the only reason that we have clause 9. There is a real risk that if the law were respected, premiums would fall faster and be lower than the Minister of Finance would like. Imagine, the government would lose all that extra money.

How low could these rates go? Last fall the chief actuary's report on Unemployment Insurance premium rates for 2001 noted that, "for 2001, there would be little risk in setting a rate of approximately 2.1 per cent."

Honourable senators, the Chief Actuary, Michel Bédard, went on to say that it is likely that a rate as low as 1.75 per cent could be set for 2001. He noted that that rate could be kept for the indefinite future.

Is the government trying to avoid a premium rate that would fall to \$1.75 per \$100 of earnings — some 50 per cent below this year's level? Think about it. A single mother working as a secretary in Winnipeg earning \$20,000 a year is paying \$10 more a year for EI than she should pay. The man or woman who writes her pay cheque is paying \$140 more than he or she should.

Honourable senators, that example is based on the rate offered by the Chief Actuary. In good years, rates could be even lower.

The same report notes that "a premium rate of 1.46 per cent, the lowest recorded since 1972, would have been sufficient to cover the costs of the program in 2000." Given that a rate of 1.46 per cent could have been set, that same secretary paid \$18 more in EI premiums last year than was needed to run the program. Her employer paid \$263 more than necessary.



Honourable senators, what are the odds of our ever again seeing a 1.46 per cent premium rate? The chances are probably next to nil so long as the EI account is being used to pad the surplus. I say that we should stop the padding. There should not be a revenue surplus in EI.

Honourable senators, we are promised that premiums will fall by 25 cents over the next three years. That is not in the bill.

If the Finance Minister said tomorrow that he wanted an extra \$25 billion from the EI fund, there is nothing in this bill to stop him from hiking premiums to \$5 per \$100 of earnings. Another \$7 billion would be added to the cumulative EI surplus this year, which would bring the total surplus to \$43 billion by March 2002. That surplus of \$43 billion is more than the amount that the government collects in EI premiums in a year. It is more than three times the cost of operating the program.

Honourable senators, we could have a three-year premium holiday and still not spend the entire EI surplus.

Let me return to my example of the single mother in Winnipeg earning \$20,000 a year. Her contribution to that cumulative EI surplus would be approximately \$1,000. The Minister of Finance does not think that she has finished doing her share to pad or create the surplus. Her employer would be paying 1.4 times this amount to the EI surplus. That employer would be making a contribution of \$1,400. That secretary and her employer would make a combined total contribution of \$2,400 to that surplus.

Let us imagine that the accountant in that same office earns \$39,000 a year, the maximum insurable earnings. The accountant's contribution to the cumulative EI surplus over the last three years would be a mere few dollars shy of \$2,000. The employer would have contributed almost \$2,800 to the surplus. The combined total contribution for the accountant and the employer would be \$4,800. Think about it.

Honourable senators, taking an amount of \$2,000 per year from the pocket of a person earning \$39,000 per year makes a major dent in their standard of living. Taking \$2,800 per year per worker from the business hurts the investment in jobs.

It is a stretch of the imagination to call these "premiums" when only half of what Canadians pay into this is returned to them as income support. This is a tax, and only a tax.

We are told that the government wants to review the way in which rates are set. We are told that we will have a discussion paper in the fall. We are told that the government will be consulting.

Honourable senators, the government should need no more than several months to write a paper for consultation discussions. The government should need no more than several months to hold consultations and to study the issues. This is nothing more than a stall tactic in my opinion.

Let me suggest one scenario that could easily unfold. The government's fiscal framework assumes a \$2 premium during the year 2004. The Chief Actuary says that EI program is sustainable over the long term with a stable premium of \$1.75, given the interest that the current law says must be credited to the EI account.

However, the government has hinted that it would like to end the practice of paying interest on the EI account, which would add 20 cents to the break-even rate bringing it to \$1.95. The government has also hinted that it would like to end requirements that the amount of the surplus be taken into account when setting premiums.

Let us suppose that they bring in a bill next year to do just that? Fast forward to the year 2003, when the power to set rates reverts back to the EI commissioners. There is not a big difference between \$1.95 and the \$2 rate for the year 2004 as set by the Minister of Finance.

Honourable senators, when this entire charade has been studied and consultation has been played out, the government will have kept EI premiums artificially high for another two years. The EI surplus will have been driven up to well over \$50 billion, including the surpluses of the years of 2002 and 2003.

How long will we allow this to happen? It should not continue. The EI surplus has taken enough money out of the pockets of working Canadians and those who write their pay cheques. Clause 9 must be stricken from this bill.

**The Hon. the Speaker:** Is the house ready for the question?

**Hon. Senators:** Question.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion in amendment?

• (1510)

**Some Hon. Senators:** Agreed.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Would those honourable senators in favour of the motion in amendment please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Would those honourable senators opposed to the motion in amendment please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the "nays" have it.

*And two honourable senators having risen:*

**The Hon. the Speaker:** Call in the senators. Is there an agreement between the Whips as to the allotted time for the ringing of the bells?

**Hon. Norman K. Atkins:** The proposal is that there be a vote tomorrow, May 9, at 3:30 p.m.

**The Hon. the Speaker:** Is it agreed, honourable senators, that the vote be deferred until tomorrow, Wednesday, May 9, at 3:30 in the afternoon?

**Hon. Senators:** Agreed.

Vote deferred.



[Translation]

## JUDGES ACT

BILL TO AMEND—SECOND READING—  
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Cook, for the second reading of Bill C-12, to amend the Judges Act and to amend another Act in consequence.

**Hon. Pierre Claude Nolin:** Honourable senators, I rise to make a few comments in connection with Bill C-12.

The purpose of this bill is to legislate commitments made by the government in its response to the first report of the Judicial Compensation Benefits Commission, dated May 31, 2000.

Right off, I would remind you that judicial independence is a pillar of the Canadian political system. Furthermore, this principle underlies the existence and the operation of the Commission.

That said, my speech will be divided in two parts. Initially, I will discuss the principle of judicial independence in our parliamentary system. Then, I will make a few comments on the provisions of Bill C-12.

Without further delay, I should like, in the next few minutes, to address the notion of judicial independence in Canada. Under section 96 of the Constitution Act of 1867, the federal government appoints the judges of the superior courts. Section 99 of this text provides that these judges shall hold office during good behaviour to the age of seventy-five. Section 100 of the Act provides that the salaries, allowances and pensions of the judges appointed under section 96 shall be set and provided by the Parliament of Canada.

While these provisions do not make specific reference to the concept of judicial independence, the late former Chief Justice of the Supreme Court of Canada, Brian Dickson, said in *The Queen v. Beauregard*, and I quote:

The preamble to the Constitution Act, 1867 states that Canada is to have a Constitution "similar in Principle to that of the United Kingdom." Since judicial independence has been for centuries an important principle of the Constitution of the United Kingdom, it is fair to infer that it was transferred to Canada by the constitutional language of the preamble.

Subsection 11(d) of the Canadian Charter of Rights and Freedoms also refers to judicial independence. It provides that any person charged with an offence has the right to be presumed

innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

Today, judicial independence is the subject of a significant debate in Canadian society, a debate that is echoed in this house. Some say that the courts, more particularly, the Supreme Court, have been involved in legal activism, contrary to the principle of the primacy of the legislative branch in the drafting of laws.

Honourable senators, this is a fascinating debate, which goes to the heart of our parliamentary system. Last week, some of you were talking about judicial activism. I remind you that our chamber is considering a bill whose only purpose is to improve the salary and benefits of federally appointed judges. I therefore do not intend to spend too long on the issue of judicial activism.

However, I should like to help my fellow senators better understand this phenomenon by taking a brief look at the theory of the dialogue between the legislative assemblies and the courts.

As a result of the adoption of the Canadian Charter of Rights and Freedoms in 1982, the courts can determine the compatibility of legislation passed by the Parliament of Canada, the provinces and the territories with the provisions of the Charter. In the second edition of *Droit constitutionnel*, Henri Brun and Guy Tremblay, both professors at Laval University, point out, and I quote:

On the whole, legislative supremacy has been tempered by the passage of the 1982 Charter.

Given the very vague nature of several provisions of this text, the judges had to rule on the validity of several legislative provisions.

With reference to judicial activism and the impact of the Charter on Canadian society, the former Chief Justice of the Supreme Court, the Honourable Antonio Lamer, said in an interview with *Le Devoir* on January 11, 2000, and I quote:

The Court was told by the people's elected representatives to interpret it for what it was, a constitutional document. It was only doing what it was told.

For close to 20 years, the Canadian courts have taken a stand on highly emotional issues involving the moral values and political aspirations of many Canadians. I am thinking here of abortion, the rights of same-sex couples, euthanasia, Quebec's right to secede, the language used on commercial signs in Quebec, the rights of linguistic and cultural minorities, the ancestral rights of Aboriginal peoples, and the sentencing regime.

Honourable senators, although hotly debated, the courts' power to review legislation is fully justified under the principle of the rule of law. It is not contrary to the principle of the separation of powers and does not threaten the principle of the supremacy of Parliament.

I agree that some legal decisions may seem to go against the legislator's intentions or the moral values that take precedence in society. However, I believe that we must interpret this based on a "dialogue" between the legislative assemblies and the courts.

In Canada, the division of powers is not airtight. The division between the executive, legislative and judicial branches is not nearly as strict as it is under the U.S. republican system. It is true that, in most cases, we may have the impression that the legislative power is subordinate to the courts. This is because certain court decisions force parliamentarians to amend provisions of acts or policies that they had previously examined and passed.

However, any court decision can be overturned, amended or even ignored by the legislative assembly that is targeted by the courts. After consultation, the legislator can decide whether to keep the legislation that has been deemed unconstitutional, amend it, or simply forget about the objectives pursued by that legislation.

There are numerous examples confirming the existence of this dialogue. For example, on April 7, the Minister of Health, Allan Rock, introduced draft regulations to better monitor the implementation of section 56 of the Controlled Drugs and Substances Act. This section gives to the minister the discretionary power to exempt an individual from the provisions of the act for medical or scientific reasons, or for reasons of public interest.

• (1520)

In June 2000, the Ontario court of appeal ruled that this exemption was unconstitutional, because it was too vague and not properly defined. I want to point out that the court had demanded a legislative, not a regulatory amendment to ensure respect of the rights of Terry Parker, an epileptic who uses marijuana for medical reasons. As you can see, it is possible to maintain this dialogue.

Honourable senators, in order to overturn a court decision that goes against a decision made by Parliament, the legislative branch can also use the notwithstanding clause under section 33 of the Canadian Charter of Rights and Freedoms, or refer to section 1 of that same text. Section 1 provides that the charter guarantees the rights and freedoms set out in it, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

In 1988, in the *Ford* decision, the Supreme Court ruled that the provisions of Quebec's French language charter, better known as "Bill 101," prohibiting the use of English on commercial signs in Quebec, were unconstitutional.

Following on this decision, the Liberal government, under Robert Bourassa, invoked the notwithstanding clause to protect the provisions of Bill 101 and thus to ensure the protection of the French language within Quebec society. Five years later, the Government of Quebec enacted Bill 86, which authorized the use

of English on commercial signs, provided the French language was predominant.

Back in 1988, the Supreme Court had ruled in *Ford* that such changes would guarantee the constitutionality of the law under section 1 of the Canadian Charter of Rights and Freedoms.

Thus, the National Assembly appears to have waited for the emotional debates stirred up by the decision by the highest court in the land to subside before changing its legislation.

These are some fine examples of how important a dialogue between parliaments and the courts is. Its existence is, moreover, recognized by Professor Peter Hogg of York University and Allison A. Thornton of Blake, Cassels and Gordon, in their essay "The Charter dialogue between courts and legislatures," which appeared in *Policy Options* in April 1999. They wrote as follows:

[English]

Judicial review is not a veto over the politics of a nation, but rather the beginning of a dialogue as to how best to reconcile the individualistic values of the Charter with the accomplishment of social and economic policies for the benefit of the community as a whole.

[Translation]

Honourable senators, I should now like to address the specific provisions of Bill C-2. In 1985, Justice Le Dain, defined in *Valente* the independence of the legislature with the following three characteristics: security of tenure, financial security and institutional independence. Financial security is an important element, not just in order to preserve judges' independence, but also to attract the most qualified and experienced candidates to the magistrature.

In 1986, in *Beauregard*, the Supreme Court stipulated that Parliament could not threaten the financial security of judges, which was guaranteed under the 1867 and 1982 Constitution Acts, by placing magistrates in a situation of objective vulnerability with respect to potential material advantages.

However, in the event of an economic recession or a marked deterioration in the situation of public finances, Parliament could reduce judges' remuneration. Under these circumstances, the legislator must, however, avoid discriminatory treatment of justices compared to other citizens.

On September 18, 1997, the Supreme Court of Canada gave an opinion on the independence of judges in provincial courts of Alberta, Manitoba and Prince Edward Island, in a reference entitled *Reference Regarding the Remuneration of Judges of the Provincial Court of Prince Edward Island*. The highest court in the land held that certain statutory provisions governing the benefits, services and places of residence of judges appointed by the governments of these three provinces were incompatible with the principle of judicial independence referred to in subsection 11(d) of the Charter.



Thus, in its opinion, the court defined new constitutional requirements with the aim of strengthening the principle of the independence of all the judiciary in the country. The provincial and federal governments are obliged to set up independent, effective and objective bodies. These are charged with the responsibility of examining the remuneration and benefits of judges and of formulating appropriate recommendations to their respective governments.

While the recommendations are not binding on the executive branch, governments are nevertheless required to act on the reports of these independent bodies. As the former Chief Justice of the Supreme Court, Antonio Lamer, expressed it in paragraph 180 of this reference, and I quote:

...if after turning its mind to the report of the commission, the executive or the legislature, as applicable, chooses not to accept one or more of the recommendations in that report, it must be prepared to justify this decision...The reasons for this decision would be found either in the report of the executive responding to the contents of the commission's report, or in the recitals to the resolution of the legislature on the matter.

The reasonable nature of the action taken by the legislature in respect of the report in question may be subject to judicial review and must meet the legal standard of "simple rationality." This is measured according to the reasons and evidence adduced by the government in the justification of its decision. If the executive or the legislature justify the decision to change or freeze judges' salaries and thus reject the recommendations of the commission, it shall be considered legitimate. In addition, it shall not be interpreted as being contrary to the principle of judicial independence.

Although this may be interpreted as an attack on the supremacy of Parliament, it can still be said that the highest court in the land wanted to encourage dialogue between the judiciary, the executive and Parliament on the issue of judges' compensation. Between 1981 and 1999, a commission similar to the present one met to study the salaries and benefits received by judges. However, during this period, neither the government nor Parliament was obliged to justify its refusal to implement certain recommendations made by the commission of the day.

Honourable senators, on May 3, Senator Cools expressed concern about the fact that the Parliament of Canada seemed unable to fix the salaries of judges as provided under section 100 of the Constitution Act, 1867. I remind her that the Senate, the other place, and Parliament as a whole may refuse to pass certain provisions of Bill C-12 or to amend the content substantially. Theoretically, this can be done by passing a resolution which sets out clearly in its preamble the reasons we believe such an action is justified.

The passage of Bill C-37 in December 1998 established the federal Judicial Compensation and Benefits Commission. Under section 26 of the Judges Act, this body is responsible for

determining whether the compensation and benefits judges receive under the act are satisfactory. In addition, the law requires the Minister of Justice to follow up publicly on the commission's report six months at the latest after receiving it. As in the past, the government's response has taken the form of a bill.

The new commission began its work on September 1, 1999. On May 31, 2000, it submitted its report to the Minister of Justice, Anne McLellan. In her official response, Ms McLellan accepted most of the commission's recommendations concerning salary increases for federally appointed judges and improvements to the annuities scheme.

However, the government justified the refusal not to follow up on the proposal to increase the number of supernumerary judges, as well as its refusal to meet 80 per cent of the costs of judges' representations before the Commission.

As I have said, Bill C-12 sets out certain amendments to the pension plan under the Judges Act. Although the Minister of Justice is prepared to implement the Commission's recommendations on this, the government response reads as follows:

The government continues to believe that there is a need for a thorough re-examination of the ... judicial annuity scheme. Properly framed, this comprehensive review would include all aspects of pension policy. In addition to the range of annuity proposals made by the judiciary in the Joint Submission, the review would revisit earlier amendments to the *Judges Act* scheme.

Honourable senators, you will agree that it would be interesting to know the reasons that now prompt the government to bring in changes to the pension plan with Bill C-12, even before the commission looks into the matter.

At first glance, the changes proposed by Bill C-12 may seem minor, but we need to insure that they are compatible with other federal legislation. In 1998, the members of the Standing Senate Committee on Legal and Constitutional Affairs had eliminated several of the provisions proposed in Bill C-37 concerning the judicial annuity scheme.

These changes had not been proposed by the Scott commission, which was mandated in 1995 and 1996 to look at judges' remuneration. The committee also indicated that the were contrary to the practice of family law in a number of Canadian provinces. Finally, there were court challenges to similar changes that had been made to other federal legislation.

Honourable senators, in conclusion, we have a significant role to play in the examination of Bill C-12. We need to ensure that this legislation respects the principle of judiciary independence while conforming to the rules of law that apply to all other Canadians. I am convinced that, in coming weeks, the committee will address these two questions seriously.



[English]

**The Hon. the Speaker *pro tempore*:** Honourable Senator Bryden, do you have a question?

**Hon. John G. Bryden:** Yes, if Senator Nolin agrees.

**Senator Nolin:** Yes.

**Senator Bryden:** The question relates to the judiciary acting under the Charter of Rights and Freedoms to interpret and sometimes second-guess what has been passed by both Houses of Parliament. In virtually every case, my honourable friend has said that Parliament has the opportunity to amend legislation and to fix it.

In a situation where the government or Parliament were to vary the terms of the recommended increase in salary and benefits for judges or say that this cannot be done at all, if the judges did not accept that position, presumably a judge would take an action that Parliament, in passing that act, was in violation of the Charter sections requiring an independent and impartial court. This would be added to the cases which state that to be independent, one has to be permanent and financially secure. If the decision found that this bill, if it were different, violated the Charter of Rights and Freedoms, would that not be differ from the normal situation because in this instance the judges are acting in their own case?

Second, while it probably is the case that the judges could not substitute their decision for the decision of Parliament, they could ask Parliament to try again. Is there not a built-in conflict when the judges are the final arbiters of whether or not to accept the commission's increase or modification by Parliament?

**Senator Nolin:** I should like to deal first with the concept of dialogue I referred to in my speech. Since 1982, the Charter has given the judiciary the power to talk to us, to tell us that we may be wrong, to tell us to change this or that, or to suggest that wording be drafted differently so that it properly conveys the intent of the legislation. The dialogue is there.

What is different? First, there is a perception of conflict, someone looking in from the outside and saying that the judiciary will deal with and arbitrate its own interests. It is up to us, not only as parliamentarians, but as a nation, to put in place the protection to ensure that our judiciary is not only impartial and independent but also credible and respected. If we are able to do that, the perceived conflict will be dealt with in a respectable and reasonable way.

With respect to the P.E.I. reference, Chief Justice Lamer forced the dialogue. It is not only the Supreme Court of Canada talking about the interpretation of the independence of the judiciary; now there is a recipe. If one does not agree with these commissions, one is allowed to disagree, but an explanation must be given. The government said exactly that in its report. It said that it agreed with this and this but not that, and it gave its reasons. The government respected the decision.

In a proper reading of the decision of Chief Justice Lamer, it is perhaps *obiter* when he states that if they do not do that, they could be questioned in front of the court. That I doubt. I do not think one can question the legislature before the court. However, one can question an act of the legislature in front of the court. That is the principle; that is the system.

If we look at the principle in the P.E.I. reference, we see a forced dialogue, which is fine. It is the next step in that dialogue, established by both Parliament and the judiciary in the evolving tree of our Charter.

**Senator Bryden:** My honourable friend did not hear Senator Lawson, who is, as we know, a long-time teamster organizer. I suggested in jest that he might do some organizing amongst the judiciary.

• (1540)

The concern I have is this: When the judiciary says that the reasons given in this bill, for example, or the reasons for rejecting certain provisions the commission has recommended are not sufficient to guarantee the independence required under the Charter, then who is the final interpreter?

Let us say that this bill is rejected on the basis that it does not do what the courts have said. Therefore, we must try again. Instead of 80 per cent, we say, "We will not give you 80 per cent, but we will give you 70 per cent." We then send the bill back. However, it may not be quite enough.

We can amend certain bills and send them back to the House of Commons. The House of Commons can say that the amendments are not acceptable and send the bill back to us. We can amend it again. If the House of Commons says no again, we can delay and amend the bill again; but, finally, the House of Commons can pass the legislation.

Is this a situation in which the Supreme Court has the final word? After all, this has occurred in many areas since 1982 with the passage of the Charter of Rights and Freedoms. If such a hypothetical scenario were to develop whereby there is a disagreement on two or three occasions, at some point Parliament would say, "This is it." The final word on the compensation of judges would then rest with the elected members of Parliament in the House of Commons, as opposed to the final word resting with the people who, rightly or wrongly, are perceived in that situation to be judging in their own interest.

**Senator Nolin:** There is no negotiation. The P.E.I. reference does not pretend to say that. It states that at the end of the day, Parliament, the government and the executive have the right not to agree with one, two or many recommendations of the commission. However, if they do not agree, they will have to say why they do not agree. The reference does not state that we are going to negotiate through the dialogue.

[Translation]

Parliament has full and fundamental right to disagree with the recommendation.

In order to respect judicial independence or, in other words, to ensure Parliament's decision does not appear arbitrary, the courts have said: "You will explain your reasons" in a case of purely salary increase.

In committee, we will examine in detail the salary of judges. Explanations will certainly be provided. Why did the Chief Justice of the Supreme Court of Canada earn \$254,000 last year? Why will her salary be increased this year? We can all have an opinion on this. However, explanations will have to be given.

The government has accepted that. It must have thoroughly examined the recommendations of the commission, which must surely explain the reasons for a salary increase, which, in the end, is fairly significant.

If it had not done so, the government would have had to provide reasons. I find that reasonable, but in the end Parliament may decide to not accept the recommendations and explain why.

In his decision, Mr. Justice Lamer provided: "Write a preamble to the bill and decide what you want, but explain the reasons in the preamble."

In this decision, Mr. Justice Lamer and the Supreme Court forced a dialogue. They did not simply wait for a reaction from Parliament. I hope this answers the first part of the question, as concerns the justices and the requirement for them to explain the reasons.

At the time, the government of Mr. Bourassa had decided to use the notwithstanding clause of the French language charter to indicate that it was apprised of the Supreme Court decision. It was paralleling the Charter for a five year period.

Five years later, they decided to return to a curative approach provided in *Ford*. The courts said: "If you agree to a smaller proportion of English, this would meet our evaluation criterion." That is what they did, but to calm political pressure, the National Assembly decided to use the notwithstanding clause, and it was completely within its right to do so.

I think we must accept this dialogue. To have a dialogue is a very good thing. Your question, however, has more to do with determining who has the final word in the dialogue. In principle, Parliament has the final word, as long as it explains why. Then the courts will accept its position. Must there be a final word? I do not think so.

As I mentioned at the end of my text, it is an evolutionary process. What was a social value 50 years ago — or in 1982 — may evolve over 50 years. The jurisprudence established 20 years ago may be less relevant in 50 years. It will then be the role of Parliament to ensure that this dialogue is maintained.

In Canada, we have a British type of parliamentary system that allows this connection between the executive and legislative branches.

[English]

**Senator Bryden:** I take from what the honourable senator is saying that if there has to be a last word, then that last word rests

with Parliament. It is helpful to have the opinion of the honourable senator.

Let us say that the commission's report recommending a \$50,000 increase is not accepted and that the government and Parliament, having acted on the bill, say "No, \$5,000 is all we will give for the next two years; and, what is more, here are our reasons." It could be one sentence, three sentences or a paragraph. From what the honourable senator has said, having done that, that is the end of it. The increase will be \$5,000.

Both the honourable senator and I are lawyers. That is almost what happened in the P.E.I. case. There was a decision that there should be an increase of a certain amount. Because every other public servant received no increase or a small increase, the Government of Prince Edward Island decided that it would not follow the recommended increase.

My concern is that some judge might say that such a figure is not adequate. Surely, the court had adequate reasons when it said that an explanation must be given.

• (1550)

These reasons are not adequate. Parliament, therefore, had no justification in not taking the recommendation of the commission and substituting the \$5,000 for the \$50,000.

Perhaps judges are not as litigious as lawyers; I don't know. We work through the system and we are back in the Supreme Court. Once again, the Supreme Court must make a decision. Does this meet the criteria laid out in the cases that serve as precedents?

That is my comment, basically. If parliamentarians provide a reasonable explanation of why the commission's recommendations cannot be adhered to and that explanation is universally acceptable to the court, then that is satisfactory. What if, on the other hand, the argument goes back and forth, not as a negotiation but perhaps by several responses of "Try again," until the public begins to ask why Parliament is not paying these underpaid judges an extra \$50,000?

That is still my concern. I hope what you say is correct and that any reasonable explanation would be accepted.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I should like to proceed further on the line of questioning of Senator Bryden, but from a different point of view.

The Supreme Court of Canada's decision in *Haig*, which was written by the then Chief Justice, addresses the requirement of the Human Rights Commission under section 15 to receive a complaint on a ground which is not in the Human Rights Act. The court found that the Human Rights Act, by excluding the prohibited ground of discrimination based on sexual orientation, was discriminatory, thus contrary to section 15 of the Charter. The court then was faced with the question of what remedy to apply? Should they declare null and void the Human Rights Act? They decided, instead, to read into the legislation.



On this question of the power of the court to read into legislation, looking at the *Vriend* case in Alberta, the legislators in their debates on the statute explicitly said that, no, they would not add that particular prohibited ground of discrimination in the Individual Rights Protection Act of Alberta.

If the court is able to use the same “read in” remedy in the case of this bill, then the court, if it does not like what Parliament decides, can read in a different salary.

This is my question. In your concept of the dialogue that must occur between the courts and the legislature, does the court not really have the upper hand because it can read into the legislation whatever it wants to read in?

**Senator Nolin:** The question of reading in is completely theoretical, because Bill C-12 is very simple.

[Translation]

Let us continue this interesting theoretical reasoning. The Supreme Court could not do that because it would have to recognize that it was itself unconstitutional. Section 100 of the Constitution Act provides that it is Parliament that sets and pays salaries. In other words, we would not set salaries; the court would do it. All we would do is pay these salaries. The court would not do that. This is going too far.

First, the “reading in” is a measure which, in my opinion, is used by the courts when a normal ruling would result in chaos, for instance if a whole act was ruled inappropriate because its objective goes against the Charter. That would not be reasonable. At this point, the courts will use a scheme to fill a void. Parliament can always take note of the decision and decide not to do anything, or decide to correct the act. If it does not do anything, it means that it agrees with the “reading in” that the Supreme Court made.

As for setting judges’ salaries, I do not see how the Canadian judiciary branch could decide to “read in” from the recommendation, set the salary of judges and ask Parliament to pay. This is fiction. It is interesting to discuss it, but I do not think it can work like that.

**Hon. Gérard-A. Beaudoin:** Honourable senators, Bill C-12, to amend the Judges Act and to amend another Act in consequence is the federal government’s response to the report of the 1999 Judicial Compensation and Benefits Commission. This commission, which is responsible for examining the compensation and benefits of judges, was established following the decision of the Supreme Court in the reference on judges’ remuneration, which I will come back to later.

Bill C-12 amends the Judges Act to increase judicial salaries and allowances, improve the annuities scheme by making it more flexible, and put into place a separate life insurance plan for federally appointed judges.

This bill seems to me to respect the legal situation. More particularly, Bill C-12 seems consistent with the spirit and the letter of the reference on judges’ remuneration. Incidentally, in this decision, the Supreme Court expressed the view that respect for the independence of the judiciary required the establishment — both at the federal and the provincial levels — of standing judicial compensation and benefits commissions. In fact, it should be noted that judges’ salaries can be reduced, increased, or frozen, as part of a general economic measure or a measure aimed at judges in particular. However, this may only be done through the special process of a judicial compensation and benefits commission. This commission must be independent, effective and objective. Its recommendations are not binding on the executive or the legislature, but they may not be set aside lightly. Decisions in this regard must be justified, before a court of law if necessary, failing which they will be declared unconstitutional.

The purpose of the commission is to depoliticize the issue of judges’ remuneration, and I quote:

The imperative of protecting the courts from political interference through economic manipulation is served by interposing an independent body — a judicial compensation commission — between the judiciary and the other branches of government. The constitutional function of this body is to depoliticize the process of determining changes or freezes to judicial remuneration. This objective would be achieved by setting that body the specific task of issuing a report on the salaries and benefits of judges to the executive and the legislature, responding to the particular proposals made by the government to increase, reduce, or freeze judges’ salaries.

• (1600)

Given these principles, Bill C-12 strikes me as a reasonable response to the report by the Judicial Compensation and Benefits Commission.

We are, of course, going to look at these principles in detail in the Standing Senate Committee on Legal and Constitutional Affairs. I would be sorely tempted to list all the areas raised by Bill C-12, but I have limited myself to the obvious purpose of this bill.

I should also like to take advantage of this opportunity to state in closing that our legal system in Canada is a strong one. It is independent and impartial. It rigorously monitors the constitutionality of legislation, both federal and provincial.

It is clearly separated from the executive and legislative branches. I say this because, since 1982, there has often been criticism of certain Supreme Court decisions, since we now have a Canadian Charter of Rights and Freedoms in the Constitution. This is of interest not only to jurists and parliamentarians, politicians and all those involved in the public service and public affairs, but to everyone else as well.



The Charter of Rights and Freedoms is of interest to everyone. This is why, for the first time in our history, people are very carefully and eagerly reading the decisions of the Supreme Court of Canada. No one can ignore the decisions of the Supreme Court of Canada. Since the Act of Settlement of 1701, the judiciary in England may be considered totally independent.

We Canadians have taken the same route in Canada. This is one of the bases of our State. I always say that one of the most important bases of a great democracy is the legal system. Our jurisprudence indicates clearly, in my opinion, that our legal system in Canada performs its functions very well. We could talk for hours and hours about these very interesting and very difficult problems, but Bill C-12 has a very specific aim, as I mentioned.

In closing I should like to add that we have an excellent judiciary, and I underscore that, at a time when constitutional law is taking on increasing importance in Canada. Obviously, I am prejudiced, but the fact is that, in a free and democratic society, an independent judiciary is essential, as is an independent bar. Canada is certainly one of the most fortunate countries in this regard.

On motion of Senator Robichaud, for Senator Cools, debate adjourned.

• (1600)

[English]

## CANADA ELECTIONS ACT ELECTORAL BOUNDARIES READJUSTMENT ACT

BILL TO AMEND—SECOND READING—  
DEBATE ADJOURNED

**Hon. Wilfred P. Moore** moved the second reading of Bill C-9, to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act.

He said: Honourable senators, thank you for the opportunity to speak to this bill, which proposes a number of amendments to the Canada Elections Act and one to the Electoral Boundaries Readjustment Act.

The modifications are twofold. First, we must bring changes to the electoral legislation to respond to the Ontario Court of Appeal's decision in the case of *Figueroa*, which concerned the identification of political parties on the ballot. Second, we would like to take the opportunity to bring some technical corrections in order to make the Canada Elections Act and the Electoral Boundaries Readjustment Act clearer and easier to apply.

I know that all of us are committed to safeguarding our electoral system and making it work even better. We take pride in our system and the way it has evolved over the years. This pride is shared by Canadians no matter where they live and what their circumstances.

Over the years, our electoral system has proved itself a reliable, fair and efficient vehicle, which enables Canadians to express their democratic will by casting their vote for the candidate of their choice. As such, our electoral law has been an inspiration for many emerging democracies that have drawn on Canada's experience in developing their own electoral procedures and laws. However, ensuring that our electoral system does the best possible job of serving Canadians has not always been easy. The fact that ours is a very dynamic country means our electoral system must continue to evolve if it is to keep pace with the needs of our citizens.

Therefore, honourable senators, we have had to revisit our electoral laws occasionally with an eye to implementing those changes required to keep our electoral system in step with trends in society. Sometimes this has meant introducing new legislation, as occurred recently with passage of the new Canada Elections Act. At other times it has meant simply "fine-tuning" existing laws to make them work even better, as is the case with the bill before us today.

While the impetus for change often comes from the public or Parliament, it can also come from the courts. A good example is the *Figueroa* case, heard recently by the Ontario Court of Appeal, which resulted in the legislation before us today. In that case, the plaintiff, a representative of the Communist Party of Canada, challenged the constitutionality of those provisions in the Canada Elections Act dealing with the registration of political parties. It was argued that requiring a party to nominate 50 candidates before it could be declared a registered political party, entitled to the benefits provided under the act, violated section 3 of the Canadian Charter of Rights and Freedoms. Mr. Figueroa's concern was that smaller parties, which find this threshold hard to achieve, are denied the financial benefits accorded to "registered parties."

Second, Mr. Figueroa objected to provisions requiring parties to have 50 candidates before their party name can appear on the ballot, on the grounds that having a candidate's political affiliation on the ballot provides voters with information they need to make an informed choice. In its response, the court ruled that requiring parties to have 50 candidates before they can qualify for financial benefits is reasonable and so justifiable under the Charter. Thus, this provision remains in force.

However, the court was more sympathetic to Mr. Figueroa's second challenge. Here the court ruled that requiring a party to nominate 50 candidates before its name could appear on the ballot represented an unjustifiable limitation on the rights of voters to make an informed choice, since it denied them important information about candidates. The court found the 50-candidate threshold unnecessarily high in light of the objective of ensuring informed choice by electors. As such, the ballot identification provision violated section 3 of the Charter and was not saved by section 1 of the Charter.

In particular, the court concluded that the party affiliation could play a role in the choice made by the elector and that consequently, it is important to identify party affiliation clearly on the ballot in order to respect the right to vote.

• (1610)

That being said, the court recognized that Parliament was justified in imposing limits as necessary to prevent voters from being confused or misled.

Voters could be misled if a ballot indicated that a candidate was affiliated with a political party that was in fact not a political party in any real sense of the word; so we need a legislative requirement for a political party to nominate a minimum number of candidates. To remedy this, the court gave Parliament until August 16, 2001, to correct this situation, which makes it imperative that we act as quickly as possible.

Honourable senators, the bill before us seeks to address the court's concerns by lowering the threshold for including party affiliations on ballots to just 12 candidates, less than a quarter of what was required beforehand. This is a complex issue requiring a balanced approach. What number would be reasonable to respect the right to vote and to prevent voter confusion?

These modifications to the Canada Elections Act would allow political parties with a minimum of 12 nominated candidates to have their party name on the ballot, provided they comply with certain administrative requirements such as the full name and abbreviation of the party, the name and address of the leader of the party, and the address of its office.

The number 12 is already found in various functions of our parliamentary system and has historical significance and a clear tradition of use. As you all know, the number 12 coincides with the number of members required to obtain recognition as an official party in the House of Commons.

The number 12 implies a participation in the electoral process at an organized level by a significant number of candidates who share a common goal. We believe it would then be fair to speak of a party without misleading the electorate.

Honourable senators, this bill represents a balanced approach to respond to the Ontario Court of Appeal ruling. It avoids the confusion that could result from having too low a threshold, and it avoids making the threshold so high that it would discourage the development of smaller parties, which often have limited resources.

Once passed, it would allow political parties with at least 12 candidates to have their name appear alongside those of their candidates.

As to the other provisions in this bill, they are, by and large, small technical matters. They include minor technical amendments designed to correct a few anomalies that have become apparent since the new Canada Elections Act came into force; terminological changes in making the English and French versions consistent; corrections to internal references within the Canada Elections Act; and finally, an amendment to the Electoral Boundaries Readjustment Act.

In conclusion, honourable senators, this bill represents a balanced approach that will address the court's concerns, while at

the same time safeguarding our electoral process from the abuse and confusion that could arise were a threshold not in place. As such, it will protect the rights of all Canadians while maintaining the integrity of our electoral system.

For that reason, I support the bill, and I urge my Senate colleagues to give it their support.

On motion of Senator Kinsella, for Senator Oliver, debate adjourned.

### ELDORADO NUCLEAR LIMITED REORGANIZATION AND DIVESTITURE ACT PETRO-CANADA PUBLIC PARTICIPATION ACT

BILL TO AMEND—SECOND READING—  
DEBATE ADJOURNED

**Hon. Tommy Banks** moved the second reading of Bill C-3, to amend the Eldorado Nuclear Limited Reorganization and Divestiture Act and the Petro-Canada Public Participation Act.

He said: Honourable senators, I am pleased to speak at second reading of Bill C-3. The amendments proposed in this bill will allow two of our nation's major players in the natural resource sector, Cameco Corporation and Petro-Canada, to continue their growth and their good management by removing restrictions that currently constrain their ability to attract new investment and to forge new strategic alliances.

Cameco was once well known to us all as Eldorado Nuclear, and at one time both Cameco and Petro-Canada were Crown corporations. By 1995 the Government of Canada had sold all of its shares in Cameco, and although the people still hold an interest of about 18 per cent in Petro-Canada, the government takes no active role in its day-to-day management.

At the time of their privatization, certain ownership restrictions were placed on both of these companies; while those restrictions were appropriate at the time, things have changed. Some of those restrictions have outlived their usefulness and practicality and are now in fact preventing these companies from taking advantage of new business opportunities.

Specifically, Bill C-3 proposes to modify the ownership restrictions on the ownership of shares and on the disposal of assets in the Petro-Canada Public Participation Act, and it proposes to amend the share ownership provisions of the Eldorado Nuclear Limited Reorganization and Divestiture Act, which is the act that governs Cameco.

In the case of Petro-Canada, Bill C-3 will increase the limit of individual ownership of shares from 10 to 20 per cent. The 25 per cent limit on the quantity of shares that can be collectively owned by non-residents of Canada will be eliminated. In other words, there will be no foreign ownership restrictions on Petro-Canada, only a restriction that no shareholder, regardless of his or her or its origin, can own more than 20 per cent of the company's shares.



Although the foreign ownership restriction will be eliminated, Petro-Canada is likely to remain majority owned by Canadians and will certainly be controlled by Canadians. First, the 20 per cent limit on individual share ownership precludes the possibility of an outright takeover by a large multinational. Second, there is a much higher level of investor interest among Canadians in Petro-Canada than among foreigners. Although the current legislation allows ownership by foreigners of up to 25 per cent, it does not exceed 16 per cent today. Eighty-four per cent of Petro-Canada is owned by Canadians. Third, the Canada Business Corporations Act will continue to require that Petro-Canada have a majority of Canadian directors.

To provide Petro-Canada with greater flexibility to manage its assets portfolio, the existing prohibition on the sale, transfer or disposal of all or substantially all of the company's upstream or downstream assets will be replaced by a broader and similar prohibition that will not distinguish between those two types of assets. Retaining a variant of the original asset disposal restriction will prevent the company from winding up its activities by the means of the outright sale of its assets.

In the case of Cameco, Bill C-3 will ease, but not eliminate, the current foreign ownership limits. The limit of individual non-resident share ownership will be increased from 5 per cent to 15 per cent, and the ownership for an individual Canadian shareholder will stay at 25 per cent. Foreign shareholders will be restricted to 25 per cent of the total number of votes cast by shareholders at any meeting of the corporation.

Although the foreign ownership restrictions will be eased, Cameco will always be controlled by Canadians and will most likely always be owned by Canadians. First, the 15 per cent limit on individual share ownership prevents multinational takeovers. Second, the 25 per cent limit on non-resident voting rights ensures that the control of Cameco will always be in Canadian hands. Third, there is a much higher degree, as in the case of Petro-Canada, of Canadian investor interest in Cameco than there is of interest by foreign shareholders. Foreign ownership only amounts to about 6 per cent at the moment in Cameco. Fourth, the Canada Business Corporations Act will continue to require Cameco to have a majority of Canadian directors.

This bill, honourable senators, has the support of both companies, which view the current restrictions as inappropriate given the fact that they do not apply to other companies that are involved in their businesses. I believe that the bill and its provisions will be welcomed warmly by the investment community, both in Canada and abroad. At the same time, it preserves the Canadian control of both Cameco and Petro-Canada. Their headquarters will remain in Canada, and the majority of their directors will remain Canadian.

• (1620)

Honourable senators, the changes in the Canoco legislation will not alter in any way Canada's commitment to nuclear non-proliferation and safety; that will be maintained. In addition to the safeguards already in place, and in addition to requiring

that all trading partners in nuclear material ratify the treaty, the Government of Canada exercises further control through nuclear cooperation agreements with its trading partners. The Government of Canada continues to believe in the need for restrictions on foreign ownership of uranium development. Although Bill C-3 increases Canoco's ability to raise foreign capital and to enter into new strategic alliances, Canadian control of Canoco will be maintained.

Honourable senators, I should like to point out that the Province of Saskatchewan is a shareholder in Canoco. The government has indicated that it fully supports this bill and the legislative amendments that are contained in it.

This is a bill of good governance, and I therefore ask all honourable senators to join me in supporting Bill C-3.

On motion of Senator Kinsella, for Senator Eyton, debate adjourned.

## RECOGNITION AND COMMEMORATION OF ARMENIAN GENOCIDE

### MOTION—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Maheu, seconded by the Honourable Senator Setlakwe:

That this House:

(a) Calls upon the Government of Canada to recognize the genocide of the Armenians and to condemn an attempt to deny or distort a historical truth as being anything less than genocide, a crime against humanity.

(b) Designates April 24th of every year hereafter throughout Canada as a day of remembrance of the 1.5 million Armenians who fell victim to the first genocide of the twentieth century.—(*Honourable Senator Bacon*).

**Hon. Lorna Milne:** Honourable senators, I wish to speak to this issue that was raised by Senator Maheu, and I congratulate her for bringing it to the floor of the Senate. However, I would urge caution and sober second thought before we leap into the middle of what seems to be a controversial and hotly contested issue.

There are hundreds of thousands of Canadians of Armenian, Turkish and Russian descent. All of these historic groups played a role in what happened in Anatolia between 1912 and 1922. These groups all have very strong and, indeed, proper emotional opinions on what exactly transpired. I believe this issue deserves study from many perspectives before any pronouncement should issue from this place.



First, I have absolutely no doubt whatsoever that hundreds of thousands of innocent people died in and around Anatolia, that troubled area of the world, between 1912 and 1922. Estimates of the dead range from just under 600,000 to, more recently, 1.5 million Armenian Christians and up to 2.5 million Anatolian Muslims. We may never know exactly how many died or what happened to each of those lost millions of individuals, but by any measure the loss of human life was staggering and heartbreaking.

Senator Setlakwe has told us how two generations of his own family were decimated by the slaughter. I have heard from members of the Turkish-Canadian community whose families were also destroyed.

Was this awful slaughter/genocide committed by the Ottoman Empire in its death throes, or was it serious and bitter inter-communal warfare between warring groups of Christians and Muslims that resulted in incredible suffering and relocation of and by both groups, in eastern Anatolia, particularly? I do not know.

The term "genocide" was coined towards the end of World War II to describe an official government policy of systematic killing of a group of people defined by race, religion or ethnicity.

As Senator Maheu pointed out, the United Nations, in 1948, set up the Convention on the Prevention and Punishment of the Crime of Genocide. This convention is now recognized by most of the nations of the world, including modern Turkey. Does this awful slaughter of both Armenians and Turks meet the very strict "minimum standards of proof," required under the UN convention? Again, I do not know. This is clearly a matter for scholars and historians with more knowledge and more resources than we have in this place to decide.

I do know that there is an enormous amount of disagreement between present-day Turks and Armenians over the historical facts of the matter. The two sides disagree vehemently on many of the precise charges that both Senator Maheu and Senator Wilson raised in their speeches on this controversial subject. Furthermore, these disagreements extend to many peaceful groups of Canadian citizens.

As I noted at the outset, there are many Canadians of Armenian and Turkish descent who have diametrically opposed views on what happened during those 10 horrific years. There is even disagreement over whether or not that monster Hitler did say those horrifying words, "Who, after all, today speaks of the annihilation of the Armenians?" Apparently even several contemporary Nazi records of that speech do not include the word "Armenians," and the Nuremberg trials were unable to authenticate it. The speech was actually a diatribe against Poland and the Polish people.

I am compelled to ask: What would be the value of inflaming the disagreements between groups of Canadians on such a complex and deeply emotional issue by taking a stand without hearing fairly and dispassionately from both sides?

I believe we would all agree that for thousands of years people living in that area have had great difficulty living together in peace, as members of so many different ethnic, religious and nationalist groups have fought to find a way to live and to coexist. There have been dozens of wars fought in this broader region in just the last 200 years as a result of these ethnic, religious and nationalist tensions, each more complex than the last.

A study of the bloody history of that area of the world seems to suggest that leading up to, during and after World War I, as the Ottoman Empire disintegrated, times were even more chaotic and passions were perhaps even more inflamed. I do not believe that it is advisable for this place to make a pronouncement on who was right and who was wrong during those woeful years without some serious study on both sides of the issue.

Honourable senators, I should like to shed a rather different light on a few points that may help to illustrate the fact that there is another view of what happened during those years. Some evidence seems to suggest that wherever the Ottomans still held firm control during that time, such as in and around Istanbul, no mass killing occurred. The Armenian population of those areas not only survived in great numbers, but their churches remained open throughout the period. We do know that as the Ottoman Empire crumbled, groups of Armenians wished to form their own homeland and that some who held that view organized militarily to destabilize the remnants of the empire in the hopes of creating that homeland.

Finally, I have been told that, after the Russian revolution, many Armenians from the area were supported by the Russian army and even armed by the Russian army and encouraged to rebel violently against Ottoman control of Anatolia.

• (1630)

I freely admit that I cannot confirm any of the information that I have just given you, but I can safely say that many do believe it to be fact and have researched at length to prove its veracity. I have seen some of the research and some of it is pretty compelling.

Honourable senators, perhaps a bit of information about modern Turkey would be of use in our thought processes on this matter. Turkey straddles the Bosphorus with territory in both Europe and Asia. This extremely strategic location places it right at the crossroads of the world. It controls the southern sea access to Russia and to five other European and Asian countries through the Bosphorus and the Black Sea. It controls the historic land routes from Europe to the Middle East and beyond to Africa, India, and even to China.

Turkey is a member of the Council of Europe but has been unsuccessful so far in gaining admittance to the European Union. I believe mainly because of its — to be polite — somewhat mixed record on human rights. In fact, currently there are about 500 prisoners in the jails of Turkey who have been on a hunger strike for the past five or six months over conditions within the prisons. Twenty of them have died, including three women.

However, I believe that Turkey is the only predominantly Islamic nation in the world with a secular, democratically elected government. It is our ally in NATO. Like Canada, Turkey has a strong separatist movement — the Kurds — but their separatists have been very violent in the recent past.

Unlike Canada, Turkey is surrounded by neighbours, some with historically expansionist ideas, who many Turks believe still covet portions of this strategically located country.

I ask honourable senators once again: Should the Senate of Canada be inserting itself into such a controversial issue without at least hearing from both sides and without hearing from independent scholars and historians? That is not the way we in this place deal with even the least controversial of bills from the other place.

Should we be inserting ourselves into an issue between two other countries, both of which I feel have themselves an obligation to open their archives to independent researchers to try to settle this matter? In fact, I have even heard it suggested that this is not only a historical matter arising from the bloody massacres of the early 1900s but could also be a weapon to be used in a potential future political issue between Turkey and Armenia dealing with reparations and boundaries.

Canada has a very hard-won reputation in that area of the world as a peacekeeper, as an impartial broker between warring factions. I would certainly want to take some time in sober second thought before voting for anything that might erode that reputation or that might put some peaceful and entirely innocent groups of Canadian citizens, of either Turkish or Armenian ancestry, at odds with each other.

Honourable senators, I repeat that I do not believe we should be taking a stand on this deeply troubling issue until historians, unbiased researchers and scholars have had full access to any archives that may hold documents about that terrible time. I call urgently on the governments of Turkey, Armenia, Syria and Russia to open their archives to these independent researchers and to let the scholarly light of history shine in.

Honourable senators, I cannot support this motion. I believe the world has yet to hear the full story and so I urge you to vote against it.

[Translation]

On motion of Senator Robichaud, for Senator Bacon, debate adjourned.

[ Senator Milne ]

[English]

## UNITED STATES NATIONAL MISSILE DEFENCE SYSTEM

MOTION RECOMMENDING THAT THE GOVERNMENT NOT SUPPORT DEVELOPMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Roche, seconded by the Honourable Senator Finestone, P.C.:

That the Senate of Canada recommends that the Government of Canada avoid involvement and support for the development of a National Missile Defence (NMD) system that would run counter to the legal obligation enshrined in the Anti-Ballistic Missile Treaty, which has been a cornerstone of strategic stability and an important foundation for international efforts on nuclear disarmament and non-proliferation for almost thirty years.—(Honourable Senator Kenny).

**Hon. Sheila Finestone:** Honourable senators, since February 8 of this year, when our honourable colleague Senator Douglas Roche rose in the chamber to draw our attention through a motion recommending that our government refuse to support the development of a proposed U.S. missile shield called the National Missile Defence system, or NMD, much media attention has been paid to this issue. Last December, during Russian President Putin's visit to Canada, our two countries took the unusual step of issuing a joint statement in which we agreed that the 1972 ABM treaty was a cornerstone of strategic stability and an important foundation for international efforts on nuclear disarmament and non-proliferation. Our two countries hoped for far-reaching reductions in strategic offensive weapons while preserving and strengthening the ABM treaty. I add my support to this view.

Who here has seen the film *Wag the Dog* with Robert De Niro and Dustin Hoffman? For those who have not, there is an important scene in the film in which the U.S. President's spy doctor, played by Robert De Niro, is arrested by an American intelligence service officer and then grilled about his role in the fabrication of a threat proposed to the United States by Albania. The De Niro character points out that, while the Albanian threat may indeed be a fabrication, the intelligence officer needs to recognize that the greatest threat to security will not come from an exchange of intercontinental ballistic missiles between the two super powers but from a lone terrorist walking into Grand Central Station with an attaché case containing a small nuclear device or vial of some deadly biological germ.

I draw this chamber's attention to this example to illustrate a point. We need to stop fooling ourselves about where defensive resources need to be allocated when it comes to global security. It is not in nuclear weapons, and it is certainly not in rocketry. You need not be a rocket scientist to know that.

Rockets do not come cheap, especially long-range rockets. To be honest, very few countries can afford the tremendous expense involved in developing intercontinental missiles. When rockets are developed, given their size it is hard to keep them a secret. With today's spy satellite capabilities, both their detection and destruction before launch is more than likely.



Any poor country intent on giving one of the big boys a bloody nose knows that rockets are not the way to go. Rather, the weapon of first choice is more likely terrorism. When it comes to terrorism, biological weapons are the poor man's nuclear bomb. Why else did we have UN weapons inspectors scouring Iraq in the way they did?

Biological or chemical weapons do not have to be delivered by missiles in order to be effective. Because they are portable they can be concealed in innocuous looking containers and shipped by air over long distances through conventional commercial means, and then delivered to their final targets in a hundred different ways. Therefore, the claim that NMD — or Star Wars as those of us familiar with the Reagan era used to call it — is designed to negate threats from so-called rogue states is simply not reasonable.

• (1640)

I believe that that is why Lloyd Axworthy, Canada's former Minister of Foreign Affairs, in the *Globe and Mail* on May 2, 2000, raised the question of whether the so-called rogue state rationale is not a code phrase like that in "wag the dog." The purpose is to camouflage the true intent of the National Missile Defence initiative. That intent is to neutralize Russian and Chinese ICBM capability.

Honourable senators, if this is so, and I believe it is, it raises at least two important questions. One, will it increase Russian and Chinese fears about their own defence capabilities? Two, will the response to NMD lead to joint efforts to devise effective countermeasures or lead to an increase in intercontinental ballistic missile numbers?

Engineers believe that every problem has a solution, but to every solution there is a problem. No matter the series of solutions the National Missile Defence System claims to provide, it creates an equal series of problems, not the least of which is the false sense of security it purports to afford the population that lives beneath its technically shaky shield.

The Massachusetts Institute of Technology, MIT, report stated:

Any country capable of deploying a long-range missile would also be able to deploy countermeasures that would defeat the planned NMD system. Biological and chemical weapons can be divided into many small warheads called sub-munitions.

These could be "released shortly after boost phase" and would "overwhelm the planned defense."

It is quite an interesting article. Those who wish to follow this topic may wish to read the article.

The report goes on to say that "China has already indicated it would take steps to penetrate the planned NMD system by

deploying more long-range missiles with numerous on-board countermeasures."

In this sense, I think that the perceived need for a National Missile Defence System is like trying to build another Maginot line; and what defence analysts failed to consider when they built the Maginot line was a new strategy of war called "Blitzkrieg." It, too, was a strategy designed to overwhelm an opponent's defences, which it did with unfortunate consequences to millions of people.

On May 1, 2001, U.S. President Bush gave a major address at the National Defense University on NMD. He made reference to the need to intercepting ICBMs in their initial boost phase in an effort to address the countermeasure problem. However, for this to be possible, the laws of physics would dictate that ICBMs would have to be both detected and intercepted from orbital space.

Honourable senators, do we really want to see any country militarize orbital space with defensive weapons, knowing that these could one day be replaced with offensive weapons? Do we want a sword of Damocles hanging over our head from space?

What should Canada do regarding the NMD question? There are numerous political, economic and social dimensions to the NMD question. As we are moving into an era of a global economy, we also need to be thinking in terms of a common global security, a security where consultations are *de rigueur*. This is not a time for unilateralism by any country, let alone by our closest friend and ally.

Let us face it. NMD raises questions and issues that need to be examined from many perspectives. As such, this august body may wish to consider a more formal public debate.

I was saddened to hear President Bush say that the 1972 ABM treaty "enshrined the Cold War past," and that it "failed to recognize the present or point us to the future." I believe that the treaty engendered a tremendous level of stability between the superpowers and would continue to do so if the parties adhered to it.

First and foremost, the parties should continue to live up to the spirit of all non-proliferation commitments; for the rule of law, whether it be domestic or international, is integral to building a peaceful society. Anything less could send us into a dangerous tailspin.

Second, our notion of global security needs to integrate the human security agenda into its makeup. This is an area that focuses on preventive measures such as the development of democratic institutions around the world. It is an area where Canada has been a particularly strong player, especially within the United Nations. If a gram of prevention is worth a kilo of cure, then, by the same token, initiatives addressing the human security agenda will deliver the dividends of peace and security that we seek for ourselves.



Honourable senators, imagine what would happen if democratic nations insisted that, for every new dollar of the trillion or more dollars needed to develop the NMD, the U.S. government had to spend an equal sum on various peace building initiatives around the world? If we are prepared to do one, why should we not be prepared to do the other? For every sword, there should be a ploughshare. Maybe this matching dollar approach is the one Canada should insist on when courted by NMD advocates.

We see an example of this kind of approach with the declaration made at the recent Summit of the Americas. Thirty-four nations recognized that a commitment to democracy and open trade goes hand in hand with the investment of billions of dollars in the health, education and connectivity infrastructure of participating countries.

No less is true when it comes to global security, for where there is development, we are more apt to gain peace.

One of the key elements of development is addressing the digital divide. As Foreign Affairs Minister John Manley put it, "The digital divide is more than a deficit of wealth — it is a deficit of knowledge." It is a deficit that translates into a deficit of opportunity.

Less than one per cent of world's population has access to the Internet. How can we possibly grow a healthy global economy unless we also grow equal access to the digital revolution? How can we expect to foster democracy? In short, global security is an integrated proposition. Yet if global security is to become a plausible reality, we need to continue working within the framework of existing alliances and existing laws.

Honourable senators, as members of both NATO and NORAD, we need to establish, in the most objective way possible, those threats that pose the greatest risk to global security and to prioritize expenditures on that basis. No nation is an island in a global economy. Nor should any nation be lulled into believing its security depends on a similarly narrow approach.

We need to work together. We need to be realistic when looking at this entire question. The survival of humanity may well depend on it.

#### MOTION IN AMENDMENT

**Hon. Sheila Finestone:** Honourable senators, I wish to make a motion in amendment. I move, seconded by Senator Bacon:

That the subject matter of this motion be referred to the Standing Senate Committee on Defence and Security for study and that the committee report back to the Senate.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion in amendment?

• (1650)

**Hon. Lois M. Wilson:** Honourable senators, I rise to support the amendment. The *Manchester Guardian Weekly* of March 15,

2001 had an interesting editorial on the national missile defence that is being promoted by the U.S.A. It said, in part, that President George Bush has highlighted the threat to the U.S.A. posed by "rogue nations." To qualify as such, a nation must actively support terrorism by building nuclear or other weapons of mass destruction, or be busy exporting the same to suspicious customers. At the top of Mr. Bush's list are North Korea, Iran, Iraq and Libya. On the shifty shoulders of rogue nations rests the entire reason for national missile defence. Those missiles are essential to deter the rogues. The distorting effect of this thinking was recently displayed when Mr. Bush told South Korean President Kim Dae-Jung that he was ending the policy of engagement and negotiation with Pyongyang.

Even though Mr. Kim, a key U.S. ally, is desperate to advance the dialogue begun at last year's summit with the Democratic People's Republic of Korea, and even though the future of the deprived, half-starved nation depends upon his success, Mr. Bush said he did not trust North Korea and pulled the plug.

There is another way, honourable senators. Ten countries including Canada, have established diplomatic relations with the DPRK since 1995. Most are working hard also to develop links with Iran and Libya. Iran's internal struggle between reformers and clerical reaction offers a guarded opening to the West. Most Western countries agree that endless, thoughtless isolation of Iran is no longer a viable policy. So why not start serious talks? Because Mr. Bush is set on missiles, and to get them, he needs rogues.

It is a Catch-22 situation. Construction of a national defence system provokes other states to take countermeasures in order to protect themselves and thus raises the possibility of a renewed nuclear arms race. The proposed NMD system would violate the 1972 Anti-Ballistic Missile Treaty, which forbids a nationwide missile defence system. There is a real danger that construction of the NMD would provoke other states to take countermeasures, thus leading to a renewed arms race. Is it not time to recognize that nuclear weapons do not and cannot provide lasting security?

The choice, honourable senators, is between nuclear arsenal, missile defence systems, space-based weapons or even pre-emptive wars on the one hand and disarmament, non-proliferation, rapprochement and serious talks on the other. I am proud that Canada has chosen to declare diplomatic relations with the DPRK, and I think this approach is more creative than isolating this country and thereby escalating tensions.

The Prime Minister has recently stated that he thinks Canada will not be confronted with a decision on the NMD very rapidly. I therefore support full debate on this issue and I look to the input of more senators on the motion before Canada makes the decision. This can be done through the appropriate Senate committee.

On motion of Senator Kinsella, debate adjourned.

The Senate adjourned until Wednesday, May 9, 2001, 1:30 p.m.

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CANADA

# Debates of the Senate

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• 37th PARLIAMENT

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OFFICIAL REPORT  
(HANSARD)

Wednesday, May 9, 2001

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THE HONOURABLE ROSE-MARIE LOSIER-COOL  
SPEAKER *PRO TEMPORE*



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## THE SENATE

Wednesday, May 9, 2001

The Senate met at 1:30 p.m., the Speaker *pro tempore* in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### EMERGENCY PREPAREDNESS WEEK

**Hon. Terry Stratton:** Honourable senators, I rise to remind you that this week, May 7 to 13, is Emergency Preparedness Week in Canada. The theme this year is "Reducing the Risk — Toward Safer Communities in the 21st Century." It focuses on the concept of mitigation, or understanding the risks of where we live and taking action to reduce those risks.

Today, simply preparing to respond to and recover from disasters is no longer acceptable. Efforts are underway to limit the frequency and severity of disasters. These efforts can be seen with the ongoing mitigation research on flooding in the Red River Basin in Manitoba. We must come up with long-term solutions.

This year, an effort is being made to reach out to one of the most valuable and vulnerable in our society — our youth — as well as focusing on our community leaders. We all know about floods, ice storms, earthquakes and hail as disasters; but do you know how to prepare and protect your family from disasters that can occur in your area?

How about the long overdue pandemic flu or the West Nile virus that we are hearing may invade Canada? What about the drinking water crisis?

To help safeguard your family, prepare a basic emergency preparedness kit and a home evacuation plan, including a rendezvous place; learn where to get information during an emergency and collect and post emergency numbers by the telephone.

In your community, join a volunteer social services or emergency response organization; help others in your community become better prepared during Emergency Preparedness Week; review the community's emergency plan and participate in emergency exercises to test the community's emergency plan.

In the country, understand how plans must integrate with the provincial emergency plan; learn how Canada's emergency preparedness system works and support national volunteer organizations.

Honourable senators, it is up to each and every one of us to reach out and inform Canadians of the importance of putting in place a plan of action for all, for we must never again suffer the impact of the ice storm, and we must limit the damages from flooding and other disasters.

[Translation]

#### NATIONAL NURSING WEEK

**Hon. Yves Morin:** Honourable senators, this week is National Nursing Week. As the Honourable Allan Rock said last year:

As the largest group of caregivers in Canada, nurses are the backbone of our health care system.

This being said, our country is currently experiencing a crisis in the nursing sector.

[English]

As a matter of fact, honourable senators, a study published yesterday in the prestigious journal *Health Affairs* has shown that the working conditions of frontline nurses have become so poor that health care is suffering, medical errors are increasing and nurses are leaving the profession in droves.

As an example, among younger nurses, nearly one third are thinking of leaving nursing. As Dr. Judith Shamian, Director of Nursing Policy at Health Canada has stated, "The challenge is clear. Fix the workplace or we will not have sufficient nurses to provide health care."

[Translation]

Honourable senators, as you know, your Standing Senate Committee on Social Affairs, Science and Technology is beginning a study on the state of the health care system in Canada. We intend to take a close look at this thorny issue.

[English]

#### NOVA SCOTIA

VISIT TO OTTAWA OF MAPLE GROVE AND YARMOUTH HIGH SCHOOL MEMORIAL CLUB OF NOVA SCOTIA

**Hon. Wilfred P. Moore:** Honourable senators, last evening I participated in a ceremony of remembrance and thanks at the Tomb of the Unknown Soldier. That ceremony was organized and attended by the Maple Grove and Yarmouth High School Memorial Club of Nova Scotia, whose motto is "Proud Canadians do proud things."



That moving ceremony concluded a three-day visit to Ottawa by these 160 students and the 40 parents and teachers who accompanied them. Wearing their red and white jackets and shirts, and carrying flags of Canada as well as of all our provinces and territories, these teenage girls and boys were a shining example to the youth of our country. They uphold good family values. They stand with respect and strong voice during the playing of our national anthem. They pledge to serve our country and keep Canada one nation. They promote equality for all people. They serve and respect our veterans and senior citizens. They remember those who made the ultimate sacrifice in the cause of freedom. They pledge to keep Remembrance Day a day of honour.

• (1340)

These young men and women under the leadership of their adviser, Joe Bishara, a teacher, have called upon our federal government to declare Remembrance Day a full national holiday. I believe that their mission deserves our support.

### PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

**The Hon. the Speaker *pro tempore*:** Honourable senators, I should like to welcome pages from the House of Commons who are with us today.

Fiona Story is studying journalism in the Faculty of Public Affairs and Management at Carleton University. Fiona is from Godmanchester, Quebec. Welcome, Fiona.

John McAndrews, of Toronto, Ontario, is enrolled in the Faculty of Public Affairs and Management at Carleton University. He is majoring in public affairs and policy management. Welcome, John.

Gareth Bate, of Oakville, Ontario, is enrolled in the Faculty of Arts at the University of Ottawa. He is majoring in visual arts. Welcome to the Senate.

[Translation]

## ROUTINE PROCEEDINGS

### ADJOURNMENT

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Thursday, May 10, 2001, at 1:30 p.m.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

[ Senator Moore ]

## FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS ACT

### BILL TO AMEND—FIRST READING

**The Hon. the Speaker *pro tempore*:** informed the Senate that a message had been received from the House of Commons with Bill C-18, to amend the Federal-Provincial Fiscal Arrangements Act, to which they desire the concurrence of the Senate.

Bill read first time.

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

[English]

## QUESTION PERIOD

### OFFICES OF PRIME MINISTER AND PRIVY COUNCIL

#### GOVERNOR IN COUNCIL APPOINTMENTS— UNDER-REPRESENTATION OF VISIBLE MINORITIES— RESPONSE TO ORDER PAPER QUESTION

**Hon. Donald H. Oliver:** Honourable senators, my question is for the Leader of the Government in the Senate arising from a response that I received to a question on the Order Paper. My question is about the fact that the response has not been very descriptive. The question was as follows:

In 1995-96, Dr. John Samuel uncovered troubling facts related to the under-representation of visible minorities in the Canadian Public Service, especially at the executive level.

In response to a great number of those questions, I received answers such as:

Until November 1, 1999, no information of this nature was available.

Then later on it says:

This information can only be released in aggregated statistical form...

Question No. 4 was:

What are the names and the number of visible minority lawyers appointed to the superior court bench in all the provinces and territories in Canada since 1993?

The answer is:

This information is not being collected.

Honourable senators, it is respectfully submitted that those are not adequate answers. My question to the Leader of the Government is: What, if anything, is she prepared to do to try to get more descriptive answers to important questions?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, Senator Oliver asks a very interesting question. I am somewhat disturbed that he has not received the fulsome response that he wished to his particular intervention.

I will commit to Senator Oliver to bring forward the issues he raised in his original question to the minister, not only to elicit perhaps a more fulsome response, but also to make sure there is a more fulsome policy.

### NATIONAL DEFENCE

#### REPLACEMENT OF SEA KING HELICOPTERS— PROCUREMENT PROCESS—LIST OF MAJORITY-OWNED CANADIAN COMPANIES INVOLVED

**Hon. J. Michael Forrestall:** Honourable senators, my question is for the Leader of the Government in the Senate. I ask the minister a question based on one I put forward yesterday.

Will the minister give us a list of majority Canadian owned and controlled companies that the government wanted to aid by splitting the Maritime Helicopter Project?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, before I begin my answer to today's question from Senator Forrestall, I want to make it very clear that I made an error regarding Senator Forrestall's original question on April 25 with respect to the Maritime Helicopter Project. I believe I compounded that error yesterday.

I want honourable senators to be aware that the Government of Canada did not retain independent legal counsel in regard to the EH Industries' complaint regarding the Maritime Helicopter Project. The government did, however, retain independent legal counsel in regard to the Search and Rescue Helicopter Project. Yes, that counsel was retired Justice Charles Dubin. I erred in putting the two files together. I apologize to Senator Forrestall for a clear confusion on my part, which led to a confusion on his part about the role that retired Justice Charles Dubin has played in all of this.

With regard to the honourable senator's specific request today for a list of the majority-owned Canadian companies that will now be able to afford themselves the opportunity to perhaps apply for contracts should they so wish, I will obtain that information for the senator as quickly as I can.

**Senator Forrestall:** Thank you. I appreciate very much the minister coming forward with that particular correction. I had a

feeling that something was a little askew and that it would catch up with her.

Honourable senators, I am not terribly interested in every Canadian-owned company that may benefit from commercial spinoffs from the project but, rather, those firms that are large enough to bid for the divided contract.

#### REPLACEMENT OF SEA KING HELICOPTERS— PROCUREMENT PROCESS—PRIME CONTRACTOR

**Hon. J. Michael Forrestall:** Honourable senators, I appreciate the minister's answer and will look forward to hearing more. I am satisfied that the government in fact now knows that we will have a split procurement process for the Maritime Helicopter Project — that is, one contract for the air frame or basic vehicle and one for the mission system. When a project of this magnitude is divided, someone has to be in charge. Webster's dictionary says the "prime" means, "primary, first in rank or authority."

• (1350)

Who in this context will be the prime contractor in the Maritime Helicopter Project? If it is not a successful bidder, would the prime contractor not then be the Government of Canada itself?

**Hon. Sharon Carstairs (Leader of the Government):** The honourable senator continues to ask interesting questions. Let me begin with a number of stages. I am glad we have been able to clarify the original answer I gave this afternoon because it was certainly my mistake. I think he and I are equally delighted that \$34.5 million has been added to the pension fund for the Merchant Navy. It seems that I am able to get the good news out a little bit faster.

**Hon. Senators:** Hear, hear!

**Senator Carstairs:** Honourable senators, in terms of who will be the prime contractor, that has not yet been determined.

**Senator Forrestall:** I thank the leader for that announcement. As to the prematurity of it, I can only say, "Thank God for Aunt Elsie."

#### HELICOPTER ACQUISITION PROJECTS— RETENTION OF LEGAL COUNSEL

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** The minister has indicated that the government chose outside counsel for one project and internal counsel for the other. Could the minister explain the government's reasoning for choosing two different sets of counsel?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I appreciate the concern that the senator has with respect to why one and not the other, but I cannot give him an answer on that today. I will try to elicit that information for him.



UNITED STATES—MISSILE DEFENCE SYSTEM—COMMENTS BY  
SECRETARY OF DEFENCE ON "WEAPONIZATION" OF SPACE

**Hon. Douglas Roche:** Honourable senators, my question is directed to the Leader of the Government in the Senate. Can the minister inform the Senate what is the government's response to the speech yesterday by U.S. Secretary of Defence Donald H. Rumsfeld who called for the United States to put weapons in space and who clearly tied their National Missile Defence System to the "weaponization" of space? Bear in mind that for at least the past 30 years, Canadian government policy, under governments of different political parties, has been to vigorously oppose the weaponization of space.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the Canadian Minister of Defence was very clear. First, he was not consulted with respect to Mr. Rumsfeld's announcement of yesterday. Minister Eggleton said: "We are against the weaponization of space, but as far as where you draw the line, I would like to see what his proposal is."

There has been literally no communication between the Secretary of Defence in the United States and the Minister of Defence nor, I would assume, the Minister of Foreign Affairs with respect to what was announced yesterday in the United States.

**Senator Roche:** Honourable senators, the United States is sending a team of official representatives to speak with the Government of Canada next Tuesday. Can the Senate be informed as to whether the Government of Canada will seek clarification of the full meaning of Secretary of Defence Rumsfeld's speech and communicate that information to the Senate before the meetings occur next week?

**Senator Carstairs:** Honourable senators, the American delegation of officials is coming to Canada on May 15 strictly for initial contact. There are no political-level exchanges planned on this occasion, and the objective from our perspective is to obtain clarification on United States proposals. I think that should remain the focus of that particular meeting.

### VISITORS IN THE GALLERY

**The Hon. the Speaker pro tempore:** Honourable senators, I should like to draw your attention to the presence in the gallery of two clerks from the Northern Ireland Assembly. Tom Evans and Stephen Graham are spending two weeks here on attachment to our Committees Directorate. On behalf all honourable senators I welcome you to the Senate of Canada and trust that your stay will be a profitable one.

[Translation]

### ANSWERS TO ORDER PAPER QUESTIONS TABLED

#### HEALTH—FOOD AND DRUG REGULATIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government)** tabled the answer to Question No. 14 on the Order Paper, by Senator Spivak.

#### GREATER TORONTO AIRPORT AUTHORITY— REDEVELOPMENT OF PEARSON AIRPORT

**Hon. Fernand Robichaud (Deputy Leader of the Government)** tabled the answer to Question No. 10 on the Order Paper, by Senator Lynch-Staunton.

[English]

## ORDERS OF THE DAY

### JUDGES ACT

#### BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Cook, for the second reading of Bill C-12, to amend the Judges Act and to amend another Act in consequence.

**Hon. Anne C. Cools:** Honourable senators, at the outset, I wish to state definitively that I do not take issue with either the actual quantum or the fact of salary increases for section 96 judges in this bill. Judges should be well remunerated. My concerns are the process and the persistent alienation of Parliament from this process of fixing judges' salaries, which is contrary to our notion of judicial independence, the constitutional convention that supports the proper exercise of power within proper constitutional relations between cabinet, the judiciary and Parliament. Canada never had the American separation of powers doctrine. Instead, we had responsible government, meaning that powers are not separated but are fused in responsible ministers of the Crown. Our Constitution chose to separate the personalities exercising the powers and not the actual powers. In my speeches on Bill C-37 on September 22, October 27 and 28, 1998, I spoke against a permanent Judicial Compensation and Benefits Commission. Judicial access to and judicial control of the public purse is unparliamentary and even hostile to Parliament.

Honourable senators, on February 15, 2000, a *National Post* article about the commission's work by Luiza Chwialkowska was entitled, "Judges press for 26 per cent raise: Government resists 'Shocked' and 'disappointed' by refusal to ante up." It reported that:

In sharply worded comments to a hearing of the Judicial Compensation and Benefits Commission yesterday, a representative of the 1,016 federally appointed judges in Canada described the current salary level of the judiciary as "grossly inadequate."

The judiciary is "shocked" and "disappointed" by the government's refusal to increase judges' pay, said Yve Fortier, a Montreal lawyer.



"The government has let its frugality cloud its objectivity," Mr. Fortier said. "The judges of Canada were very disappointed with the government's manifest venality in rejecting out of hand the substance of the conference's recommendations."

The *National Post* quoted the judges' lawyer, Mr. Fortier, again, saying:

What might be adequate to ensure financial security of the judiciary is quite inadequate to attract outstanding candidates to the bench...

and concluded:

In addition, judges complain that their salaries are far out of line with those of senior lawyers. According to the judges' figures, the top-paid third of lawyers in Ontario earned on average \$381, 239, with some earning more than \$700,000.

This jolted the public's sensibilities. Needless to say, Parliament's interests or opinions were never considered even though the British North America Act 1867, section 100 states:

The Salaries, Allowances, and Pensions of the Judges of the Superior... courts... shall be fixed and provided by the Parliament of Canada.

The judges and their lawyer spoke as though the government is Parliament.

Honourable senators, Bill C-12's contents are not a parliamentary proposition. Also, Bill C-12's proposed salaries are not open to any input whatsoever from members of Parliament. These salaries before us have not been fixed by Parliament, and it is unparliamentary to say that they are. This bill is contrary to the principles of judicial independence and contrary to the principles of responsible government. Its proposals are an executive action from judges in their executive capacity, executive in content, in form and in substance. They defeat and oust Parliament's constitutional role in the BNA Act's section 100 in determining the salaries of judges. This overthrow of Parliament with the Attorney General's support is a grievous matter. It overthrows 400 years of constitutionalism and reinstates the old mischief, that fraternity between the executive and the judges. I shall review the legal, constitutional and parliamentary history of the words "fixed and provided" by the parliament.

• (1400)

Honourable senators, for this we must look to the Stuart Kings, the United Kingdom's civil wars, and to the role of the judges therein, particularly to the consequences for judges who angered the King and the consequences to society when judges curried the King's favour, his pleasure. The need for judicial independence stems from judges seeking the royal pleasure, be it the governor's or the cabinet's approval, from judges being the pawns or the partisans of the ruling elite. The most notorious

case was Judge George Jeffreys. He presided over the "Bloody Assizes" of 1685. King James II's royal pleasure included appointing him Lord Chancellor in 1685. Judge Jeffreys' judicial activities were ruthless and murderous. His ordered executions of the King's enemies numbered hundreds, his convictions thousands. Upon King James II's forced abdication in 1688 by the Glorious Revolution, Judge Jeffreys was arrested and died four months later in the Tower of London. The new King William of Orange and Queen Mary immediately re-established judicial appointments "during good behaviour," the tradition prior to the Stuart Kings' peculiar use of "at pleasure" appointments. William and Mary, however, declined to include "during good behaviour" and the judges' salaries in their settling bill, the Bill of Rights 1688, lest the actual payment of judges' salaries would fall to them or be left to their charge. However, in 1701 the Act of Settlement did. It stated:

...Judges Commissioners be made *Quamdiu se bene gesserint*, —

— which means during good behaviour —

— and their Salaries ascertained and established; but upon the Address of both Houses of Parliament it may be lawful to remove them.

The constitutional resolution of the judges' position was to place the judges under the protection and the superintendence of Parliament.

Honourable senators, judges' salaries were not ascertained or established by Parliament for 100 years. In the United Kingdom, the Consolidated Revenue Fund was only established in 1787 by Prime Minister William Pitt the Younger, advised by Adam Smith, author of *The Wealth of Nations*. No total salary of a judge was charged upon the Consolidated Revenue Fund until 1830. After the Act of Settlement 1701, the independence of judges was viewed as sufficiently secured by the good behaviour clause in their patents, resting on statutory authority fortified by the statutory fact that any attempt by the king, the prime minister, or the cabinet to remove a judge would subject the removing minister or king to Parliament. Further, only by the Supreme Court of Judicature Act in 1873 were the salaries of judges ascertained and established in the true sense.

Honourable senators, I turn now to the political history of the judges in Canada, their relationship to Parliament, politics, and judicial independence. The problems were large. Judges and their oligarchies dominated politics in both Upper and Lower Canada. Judges were closely involved in politics, and sat as members in legislatures. In 1792, when Lieutenant-Governor John Graves Simcoe delivered the Throne Speech to the first sitting of Upper Canada's Parliament, the then Speaker of the Legislative Council was Upper Canada's Chief Justice William Osgoode, who was also a member of the Executive Council. In Lower Canada from about 1809 to 1830, Jonathan Sewell was simultaneously the Chief Justice of Lower Canada, the President of the Executive Council, and the Speaker of the Legislative Council. Lower Canada's Assembly even impeached him for his political involvement. Judges' role in politics was a live and difficult political question in the Canadas, even in the rebellions.

Honourable senators, in pre-Confederation Canada, separating the judges from politics was a major political task. In Upper Canada, it was undertaken by Legislative Assembly members, William Warren Baldwin, his son Robert Baldwin, William Lyon Mackenzie, and other emerging Liberals then known as the Reformers. These men braved — and brave it was — the Tory Family Compact with its peculiar legal and judicial oppression, often supported by the magistracy and the Attorney General. In Upper Canada, the movement for responsible government was closely intertwined with that to separate judges from politics. William Baldwin was the first to propose that, to remedy Upper Canada's evils, the judiciary must be excluded from the councils. Reformers endeavoured to get the judges out of politics, off executive councils, and out of legislative chambers, and simultaneously to uphold the political notion of judicial independence in a political and parliamentary way. These emerging principles of Liberalism by antecedent Liberals, then named Reformers, prevailed in our Constitution.

Honourable senators, Reformer William Lyon Mackenzie, York's member of the Assembly, grandfather of Liberal Prime Minister William Lyon Mackenzie King, in a petition and address to His Majesty, King William IV, adopted unanimously on July 16, 1831, in describing the ills said:

...for there is not now, neither has there ever been in this province, any real constitutional check upon the natural disposition of men in the possession of power, to promote their own partial views and interests at the expense of the interests of the great body of the people.

The address continued:

The undue advantages thus possessed by persons in authority, open a door to the practice of bribery and corruption in every department of the state....

The address' recommendation 9 stated:

That none of Your Majesty's Judges...be enabled to hold seats either in the executive or legislative councils, or in any way to interfere and concern themselves in the executive or legislative business of the province.

This was a huge problem. This address was published in Margaret Fairley's 1960 book, *The Selected Writings of William Lyon Mackenzie 1824-1837*. In 1832, in England, William Mackenzie met Whig Secretary of State for the Colonies, Lord Goderich. For this, the Tory Family Compact increased their attacks on Mackenzie.

Honourable senators, sympathy for the Canadian Reformers' constitutional positions had grown among British Whigs. Gerald Craig, in his 1963 book *Upper Canada: The Formative Years 1784-1841*, wrote:

The reformers also complained of the presence of the Chief Justice in the executive council, and of his role as Speaker

of the legislative council, and of the presence of other judges in the latter body. Sir Peregrine Maitland vigorously combatted reform accusations, but by 1831 Lord Goderich was prepared to concede the point.

The same problems pertained in Lower Canada, but it was the Upper Canadians who upheld judicial independence and responsible government. On February 8, 1831, the same Whig Secretary of State, Lord Goderich, in his instructions to the Governor in Quebec, stated:

I am to signify to your lordship his Majesty's commands to communicate to the legislative council and assembly, his Majesty's settled purpose to nominate on no future occasion a judge either as a member of the executive, or legislative council of the province. Whatever reliance might be placed on the personal integrity of the judge, it is desirable that they should be exempted from all temptation to interfere in political controversies, and even from a suspicion of any such interference.

The single exception to this general rule will be that, the chief justice of Quebec...

In Upper Canada, by 1834, Reformers were carrying public opinion and had begun to dominate the legislative assembly.

Honourable senators, the tragic rebellions in both Upper and Lower Canada unfolded in 1837. Whig Prime Minister Lord Melbourne sent Whig Lord Durham to investigate these affairs. The Baldwins, William and Robert, personally met with Lord Durham here in Canada and had a positive effect. In 1839, Lord Durham's "Report on the Affairs of British North America," he recommended that:

The independence of the Judges should be secured, by giving them the same tenure of office and security of income as exist in England.

Months later, December 7, 1839, and before the Union Act 1840 passed in Britain, Lord John Russell, the Colonial Secretary, instructed the new Governor General of British North America, Charles Poulett Thomson, later Lord Sydenham, to conduct affairs according to the constitutional principles of the not-yet-passed Union Act, saying:

In our anxiety thus to consult, and as far as may be possible to defer to public opinion in the Canadas on the subject of constitutional changes...

— and —

...the settlement of a permanent civil list for securing the independence of the judges, and to the executive government that freedom of action which is necessary for the public good...



• (1410)

Honourable senators, a year later the Union Act 1840, uniting Upper and Lower Canada as the United Province of Canada, was enacted. Its clause L said:

And be it enacted, That...all Duties and Revenues...shall form one Consolidated Revenue Fund...

Its clause LIII said:

And be it enacted, That, until altered by any Act of the Legislature of the Province of Canada, the Salaries of the Governor and of the Judges shall be those respectively set against their several Offices in the said Schedule A;

The Schedule A listed the judges and the salaries. These events — the Union Act, plus Upper Canada's 1834 Act entitled An Act to render the Judges of the Court of King's Bench in this Province independent of the Crown, about appointing judges during good behaviour plus the Reformers ascendancy, epitomized in the Reform co-premiership of Robert Baldwin and Louis-Hippolyte LaFontaine's actions — founded the Judicature sections of Confederation's British North America Act 1867, being Part VII, sections 96 to 101.

Upon Confederation, honourable senators, Prime Minister John A. Macdonald made himself the Attorney General and Minister of Justice, knowing well their importance and the difficulties. In fact, he himself drafted the 1868 Department of Justice Act.

Honourable senators, the first dominion act about judges' salaries was the 1868 Act respecting the Governor General, the Civil List, and the Salaries of certain Public Functionaries. From 1868 to 1906, judges' salaries were enacted by varied, disconnected and sundry individual statutes. Some of them even named the individual judges who were being remunerated. In 1906, the first comprehensive act was enacted as the Judges Act. Its long title was an Act respecting the Judges of Dominion and Provincial Courts.

Honourable senators, the post-Confederation Dominion Parliament chose to implement from section 100 the words "fixed and provided financially," not by Parliament's usual financial annual process, the Supply and Estimates process, but rather by direct charge against the Consolidated Revenue Fund; that is, by a statutory charge. Parliament's reason for this exceptional statutory charge versus the annual Estimates Supply practice was obvious. It was to avoid judges' salaries being motions for non-confidence votes, which could defeat a government or cause a ministry's resignation and force an election on the ever-thorny issue of judges' salaries. In short, it was to avoid a confidence vote by a member moving a reduction to the government's Estimates to reduce some judge's salary, perhaps because of a ruling that some particular member simply did not fancy. I would ask honourable senators to think about that: an election forced on the question as to whether or not

judges should be paid ...700,000 per year, plus pensions, plus cars and plus expenses.

**The Hon. the Speaker:** Senator Cools, I regret to advise you that your 15 minutes have expired. Are you requesting leave to continue?

**Senator Cools:** Yes, I am.

**The Hon. the Speaker:** Is leave granted, honourable senators, for a further period of five minutes?

**Hon Senators:** Agreed.

**Senator Cools:** Honourable senators, I had opposed a permanent Judicial Compensation and Benefits Commission. This commission is an unaccountable agency with quick access for certain chief judges to the Deputy Ministers of Justice, to the machinery of government and to the Consolidated Revenue Fund. This defeats the historical, moral and political purity of judicial independence and ousts the true parliamentary role in the fixing of judges' salaries. It deprives Canadians of their undoubted constitutional right to their representative parliament's control over the public purse in respect of judicial salaries.

Again, honourable senators, I shall cite a legal opinion by York University Law Professor Peter Hogg that is found in Martin Friedland's 1995 book *A Place Apart: Judicial Independence and Accountability in Canada*, which he wrote for the Judicial Council. This 1989 legal opinion was given to and paid for by the Canadian Judicial Council. It was about judges' attempts to bind Parliament to the judicial commission's recommendations by negative resolution and about the words "fixed and provided" contained in section 100 of the BNA Act. Professor Hogg wrote:

...the inaction by Parliament is insufficient participation in the process to enable one to say that the salaries have been fixed by the Parliament. It seems more natural to say that the salaries have been fixed by the tribunal, and left undisturbed by the Parliament.

Honourable senators, in conclusion, the current scheme of fixing judges' salaries excludes Parliament. It is unparliamentary and it is a constitutional vandalism. Proper respect for the justices is time honoured, grounded in constitutional comity and the proper constitutional relations amongst cabinet, the justices and Parliament, all fortified by judicial independence. Judicial independence is a constitutional convention, a political rule of political morality to guide the exercise of power by the constituent parts of the Constitution.

Proper respect and proper protection of the judges is best achieved by upholding the representative role of Parliament and its rights and duties in the protection of judges. Judges have made themselves judges in their own cause and in their own cases; mainly their salaries. It is unhealthy to any nation's Constitution that judges should determine their own limits and boundaries in law, as they have in their judgments on their own salaries.



Honourable senators, thank you for your attention. As I have said, I take no issue with the quantum or the fact of salary increases to judges in Bill C-12, but I do take strong issue with this very flagrant violation and exclusion of Parliament.

**The Hon. the Speaker:** Honourable senators, Senator Grafstein has requested the floor. I must advise honourable senators that if Senator Grafstein speaks now, his speech will have the effect of closing the debate on the motion for second reading of the bill.

**Hon. Jeremiah S. Grafstein:** Honourable senators, I do not intend to deal seriatim with all the issues raised by the various speakers. It is my intention that we refer this matter to committee as soon as possible. At third reading, I hope to respond to some of the issues raised by my honourable friends that I think are contrary to the intent of the bill.

**The Hon. the Speaker:** Senator Grafstein having spoken, the debate is now concluded.

It was moved by the Honourable Senator Grafstein, seconded by the Honourable Senator Cook, that this bill be read the second time.

Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Grafstein, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

## CANADA ELECTIONS ACT ELECTORAL BOUNDARIES READJUSTMENT ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Moore, seconded by the Honourable Senator Banks, for the second reading of Bill C-9, to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act.

**Hon. Donald H. Oliver:** Honourable senators, I rise today to speak to the second reading of Bill C-9, to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act. At the outset, I wish to commend Senator Moore for his excellent exposition yesterday.

Election law is an area in which I have had some experience over the last years. In six consecutive general elections starting in 1972, I acted as legal counsel for the federal Progressive Conservative Party, liaising with the Chief Electoral Officer, should problems arise over interpretations of various sections of the Canada Elections Act.

Prior to my appointment to the Senate, I was a member of what became known as the Lortie Commission on Electoral Reform and Party Financing, which was established after the 1988 general election to carry out a thorough review of the Canada Elections Act.

I mention that background only to illustrate that I do not come late to this subject and that I have witnessed changes to the Canada Elections Act being made in previous Parliaments. That is why this bill and its predecessor, Bill C-2 in the last session of the last Parliament, are so disappointing.

There was a time under the previous government and, indeed, under previous Liberal administrations when changes to the Canada Elections Act would not reach the floor of the other place for first reading unless the contents of the bill were unanimously agreed to by all recognized political parties. For that reason, when changes came to that vitally important act, they were usually far-reaching and implemented broad designs of public policy.

• (1420)

This, however, is not the practice of this government, which views the Canada Elections Act as a statute like any other; that is, amendments are brought to it without prior consultation and certainly without agreement of the parties most affected by the proposed changes.

I mention this only because I would have thought that the first piece of electoral legislation we would see in this Parliament would address the chaos caused by the use of the permanent electoral list in the 2000 general election.

The bill before us is today is fairly simple, designed primarily to address the decision of the Ontario Court of Appeal in what is known as the *Figuroa* case that yesterday was discussed in detail by Senator Moore. In that case, the Ontario Court of Appeal overturned the provisions of the Canada Elections Act, which required a party to have at least 50 candidates running in a general election before the party could be identified on that election ballot.

In the *Figuroa* case, the Communist Party of Canada argued that this provision benefited larger political parties and, by virtue of the same reasoning, discriminated against the smaller political groupings. The court felt that this contravened the Charter and could not be justified in a free and democratic society and thus failed what has become known as the *Oakes* test. The court, in making its ruling, decided that 50 was too high a figure, but did not indicate what the appropriate threshold should be in order for political parties to be identified on a ballot.

The Lortie commission addressed this matter in its report and recommended that the 50-candidate threshold be reduced to 15. This recommendation is quoted in the judgment of the Court of Appeal. The government has seen fit to reduce the figure of 15 to 12. Therefore, political parties are able to have their names printed under the name of their nominated candidate if the Chief Electoral Officer confirms the nomination of 12 candidates for that party at the close of nominations.

I look forward to discussions in committee on this subject so that we may hear from the government and the Chief Electoral Officer as to why the number 12 was chosen as the appropriate figure to be contained in Bill C-9.

Honourable senators should know that the level of 50 candidates was lowered to 12 in relation to putting the name of a political party on the ballot. There are many other matters in the Canadian Elections Act for which the requirement of 50 nominated candidates still applies.

The Supreme Court of Canada has agreed to hear an appeal by the Communist Party of Canada. In this appeal, this party will argue that the continuation of the 50-candidate threshold is contrary to the Charter of Rights and Freedoms in relation to other matters, such as the issuing of federal tax receipts for fundraising. Hence, we may see other amendments to the 50-candidate rule before the end of this particular Parliament.

Honourable senators, this bill also deals with a number of issues that could be termed housekeeping matters and therefore of a non-controversial nature. There is, however, one housekeeping item that I wish to highlight now, and I will wait until we get to committee stage to discuss it in more detail. This is also an issue that was raised in the other place by the Progressive Conservative member from Pictou—Antigonish—Guysborough.

This bill purports to amend the Canada Elections Act to reflect the fact that the courts have held that the blackout period, in which broadcasters are expressly excluded from making free and paid time available to candidates and registered parties, must be reduced to polling day only. In other words, the blackout period is to be restricted to polling day — the day of the election.

I believe, as did my colleague in the other place, that the wording of clauses 17, 18 and 19 could be interpreted as including the day before polling day as part of the blackout period. If this interpretation is correct, the changes proposed in this bill will not be accomplished as planned. I hope this matter can be clarified in committee. If not, we may bring an amendment in an attempt to make these clauses crystal clear.

Returning to my opening theme, it is unfortunate that changes to the Canada Elections Act are developed and introduced without prior consultation. Perhaps if the government employed a different strategy, it might find agreement on changes to the act that would require full financial reporting by riding associations.

Honourable senators will recall that I raised this issue the last time the Elections Act came before this chamber. There might be an agreement on changes to the definition of election expenses, changes that would reflect the reality of spending during an election campaign.

Honourable senators, I look forward to discussions in committee in relation to what is in this bill and what has been omitted from this bill. I especially look forward to receiving an explanation as to why the permanent elections list failed us so badly in the last general election.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Moore, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

[Translation]

## MOTOR VEHICLE TRANSPORT ACT, 1987

BILL TO AMEND—COMMITTEE REPORT  
ADOPTED AS AMENDED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Transport and Communications (Bill S-3, to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts, with amendments) presented in the Senate on May 3, 2001.

**Hon. Lise Bacon:** Honourable senators, as part of its study of Bill S-3, the Standing Senate Committee on Transport and Communications heard several witnesses, including the Minister of Transport, representatives of several organizations with a direct interest in motor vehicle transport, shipping groups, Transport Canada officials, and even an individual who had worked as a trucker.

The purpose of Bill S-3 is to substitute safety for economic regulatory aspects as the central theme in the Motor Vehicle Transport Act. Generally speaking, responsibility for extra-provincial motor vehicle transport continues to lie with the provinces, but the issuing of safety certificates required by the carriers in question will depend on an appropriate level of compliance with the National Safety Code, a standard with 15 parts covering certain aspects of the operation of commercial vehicles and developed jointly by the provinces and territories and the federal government.



[English]

Committee members proposed three amendments. The first amendment concerns proposed section 16, which is the authority to make regulations for the attainment of the objectives of this bill. The proposed change restores the language used in the existing act. This change adds to section 16(1)(d) of the act the words "and the provision of information." The government should be able to have access to the information. It makes clear in the regulatory powers that information related to safety is under the purview of those powers. That is why the amendment was proposed.

The second amendment was made following two committee concerns that the time frame for the implementation of the standards of the National Safety Code is falling short of what some provinces have promised to do. Although the bill contains measures to encourage provinces to be vigilant in this matter, things are clearly falling behind schedule. This concern is reflected in the amendment the committee has made to the bill by adding proposed section 25, which calls for annual reports of commercial vehicle accident statistics to be made by the minister to Parliament.

The final amendment to Bill S-3 is that a comprehensive review be tabled in Parliament prior to the expiry of the fifth year after the enactment of the legislation. Already included in the bill is the provision that the minister shall make the report available to the ministers responsible for transportation and highway safety.

• (1430)

Further to Senate committee discussions, it seemed desirable that the report be tabled in both Houses of Parliament, which is why we amended the report in this regard and added a third paragraph to clause 26.

[Translation]

I should like to thank sincerely the members of the Standing Senate Committee on Transport and Communications for the serious work they did during consideration of Bill S-3. The observations and comments bear witness to the seriousness of our work.

Senator Spivak had sought another amendment with respect to clause 9, which the other members of the committee rejected.

Clause 9 provides that the minister may withdraw the provinces' power to issue safety fitness certificates, if he is satisfied after consultation with the provinces that a provincial authority is not acting in accordance with the law.

The Council of Ministers for Transport, both federal and provincial, meets and has a mandate to ensure that the provinces comply with the code's standards, in clause 9. In this context, how can the amendment be justified?

The provinces have already agreed on establishing a national safety code and realize they have to apply it in their own territory.

The intent of Senator Spivak's amendment would perhaps be interpreted by them as federal government interference in provincial jurisdictions, and we know how sensitive the provincial ministers are in this regard.

[English]

It has been brought to my attention that a clerical mistake was made in the English version of the report that was presented last week, namely, a word is missing. That word is "separately."

With leave of the Senate, I ask that the report be amended in the English version of the second amendment by adding in paragraph 25(2)(a) the word "separately" after the word "reported." This is the amendment that was adopted by the committee, as correctly reflected in the French version of the report. It should read as follows:

...reported separately for bus undertakings and truck undertakings; and

#### MOTION IN AMENDMENT

**Hon. Lise Bacon:** Therefore, honourable senators, with leave of the Senate, I move, seconded by Senator Maheu:

That the Report be not now adopted, but that it be amended, in the English version, in amendment No. 2, by adding, in paragraph 25(2)(a), the word "separately" after the word "reported".

**The Hon. the Speaker *pro tempore*:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion in amendment?

**Hon. Senators:** Agreed.

Motion agreed to.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the report, as amended?

**Hon. Senators:** Agreed.

Motion agreed to and report, as amended, adopted.

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Poulin, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.



## PERSONAL WATERCRAFT BILL

### SECOND READING—DEBATE ADJOURNED

**Hon. Mira Spivak** moved the second reading of Bill S-26, concerning personal watercraft in navigable waters.

She said: Honourable senators, Bill S-26, which was placed before you last week, is about personal watercraft, or PWCs, more commonly known by their trade names as jet-skis or seadoos. For those not familiar with them, they are small, high-powered jet-driven machines that people ride like a snowmobile on the water.

In brief, the bill would allow municipalities, cottage associations and other bodies to place restrictions on PWCs on designated lakes, rivers or portions of coastal waterways. It would also allow local authorities to ban them entirely where they pose an inordinate hazard to safety, to the environment or to the peaceful enjoyment of federal waterways, which is any navigable water.

The bill would not ban personal watercraft everywhere, as Switzerland has done. It would not ban them from all national parks and recreational areas, as the U.S. National Park Service has agreed to do. The bill is, in effect, a compromise, something more amenable to the Canadian way of approaching problems.

At the heart of it are two principles, the principle of choice and the principle of local control. It would allow owners or renters of personal watercraft to continue to use them in areas where they are welcome. It would give local authorities, the people who best know their area, the control to decide where restrictions are needed.

When my office began contacting local authorities last fall to determine their thoughts about this approach, the response was one of overwhelming support. Municipalities and cottage associations from British Columbia to Newfoundland said they wanted and needed this action by Parliament to deal with local problems caused by PWCs.

The bill is supported in principle by all 141 municipalities in British Columbia; by half the rural municipalities in Alberta; by the Union of Nova Scotia Municipalities; by the Newfoundland and Labrador Federation of Municipalities; by the Manitoba Association of Cottage Owners, with its 60 member associations that represent more than 9,000 cottagers in my province; by FAPEL, a Quebec federation of cottage associations; by the Alberta Summer Village Association; by the Prospect Lake and District Community Association on Vancouver Island, which has already put a PWC ban in place; by the Sierra Club of Canada; and by scores of individuals who sent letters and e-mails when they read about the bill in their community newspapers.

In February, before we had the final draft of the bill, we received a letter from the Township of Archipelago in Parry Sound, the heart of Ontario cottage country. Attached was Resolution No. 01-018, which states:

Whereas it is of concern to the township that there is a growing inability to manage users of water resources and

it recognizes that certain water use issues may fall outside the jurisdiction of local municipalities but are not presently appropriately regulated by the federal or provincial governments:

And whereas a number of Canadians nation-wide have voiced their concerns with respect to the increasing problems of noise pollution, nuisance levels, environmental pollution and harm to wildlife caused by personal watercraft on Canadian waters:

And whereas Senator Mira Spivak is proposing to introduce legislation in the next session of Parliament which, if passed, would give elected local authorities the means to place restrictions on the use of personal watercraft on lakes, rivers or portions of coastal waters:

Now therefore be it resolved that Council supports Senator Mira Spivak's proposed legislation.

I am tempted to rest my case. Resolution number 01-018 says it all in the words of people who have to deal with problems summer after summer. Among the individuals in support are boating safety officers of the Canadian Coast Guard and a marine enforcement officer of the Ontario Provincial Police. They cannot speak for their organizations, but they know firsthand what the problems are and favour this solution.

• (1440)

Not everyone we contacted favoured this approach. As expected, personal watercraft manufacturers are not in support. They believe that it is untrained drivers, not their machines, that cause the problems and that education can solve everything. That was the approach adopted by a cabinet committee in 1994. In fact, the Canadian Coast Guard had drafted regulations that would have made this bill redundant. Communities in Quebec and British Columbia wanted the right to restrict PWCs; the Coast Guard responded with new proposed regulations. The cabinet committee, however, rejected the option. It was rejected in good faith, I believe, but on the erroneous assumption that boating education could solve all the problems. Cabinet told the Coast Guard to go back to the drawing board to devise new safety regulations for all types of pleasure craft in respect of equipment, boating safety training and the age of boat and PWC operators. Now, no one under 16 years of age can drive these powerful machines.

This approach was advanced by the personal watercraft manufacturers, who, to their credit, contributed financially to boating programs. It was also an approach that held that personal watercraft were not unique, and that it was somehow discriminatory to allow local committees to restrict them, while allowing larger power boats on lakes and rivers.

Three things can be said at this juncture. First, the educational approach has not worked; the problems have not gone away. Second, personal watercraft are unique, both in their design and the way in which they are used as a "thrill craft." Third, it is no more discriminatory to regulate the activity of PWCs than it is to regulate the activity of waterskiing or boardsurfing, which are currently allowable through the Boating Restriction Regulations.

Some municipalities said that PWCs were not a problem in their areas, and some took no position. A few organizations feared that we would be setting a precedent by allowing restrictions on one type of activity. I submit that what we would be doing is no different from the more than 2,000 Boating Restriction Regulations in place across the country that have allowed communities and cottage associations to restrict all power boats, set speed limits or restrict the hours of waterskiing.

Local authorities that strongly favour this approach want it because they know that boating safety courses and age restrictions have not been sufficient. They want the choice to restrict personal watercraft where residents agree that they are clearly hazards to safety, to the environment, or to the peaceful enjoyment of their lakes.

Restrictions could take the form of limiting the hours of use to allow people who have PWCs to use them, for example, in the early afternoon on a lake, but to disallow the use of them in the early hours of a peaceful Sunday morning. They may agree to allow them on a portion of a large lake or river, but to disallow them near swimming and picnic areas, or where waterfowl nest. They may set speed limits, or define the distance that PWCs must maintain from shore, from canoes or from other boats. These are all reasonable measures that this bill contemplates.

I have referred to the problems of PWCs repeatedly. I want to briefly outline them. First and foremost are the deaths, injuries and rescue operations that result when these high-powered machines collide with others on the water or with rocks, or they become stranded offshore. Four years ago, in Quebec, a four-year-old child and an eight-year-old child died in a PWC collision. They were with their grandfather in an inflatable dinghy on Chambly Basin when a rented PWC ran right over them. The driver was a 20-year old woman, and her boyfriend had rented the machine. The rental operator was very cautious in that he refused to rent to anyone under 21 years of age; he set distance limits from shorelines and from other boats; and he forbade passengers to take turns driving. The young woman was driving this powerful machine that, at half-throttle, travelled 44 kilometres per hour. The result was the death of two children.

In Manitoba, on a lake where I vacation, a young man was decapitated in a PWC collision. A letter from Barrie, Ontario, told us of a six-year-old boy who had both legs broken, and I have others. These are not isolated incidents. An extensive review of PWCs in the United States found that several years ago they made up 9 per cent of all registered boats, but were involved in 26 per cent of all boating accidents and 46 per cent of all boating injuries.

Boating safety training will go some way to reducing this toll, but it is important to remember that PWCs are primarily "thrill craft." People ride them for the fun and the thrill of speed. There

will always be thrill seekers whose courage is greater than their skill or judgment. It makes sense to keep them away from swimming areas, shorelines or other areas frequented by canoes, dinghies or other vulnerable craft. Education can no more curb the impulse of some people to go for the thrill of dangerous manoeuvres than driver education can stop drag racing or country back roads. Too often the tragic result is that the thrill seeker on the PWC is not injured or killed, but others, who happen to be in the water, are.

The pollution from PWCs is nothing short of astounding. The majority are powered by two-stroke engines. The U.S. Environmental Protection Agency estimates that up to 30 per cent of the fuel in these engines is discharged unburned directly into the water. With fuel consumption rates of up to 10 U.S. gallons per hour, one PWC can discharge 50 to 60 gallons per year, based on less than one hour of use per week.

The exhaust emissions also cause air pollution. The emissions from one 100 horsepower PWC, driven for just seven hours, is equivalent to the emissions from a passenger car driven 160,000 kilometres. Just one hour of PWC use generates as much smog-forming pollution as a passenger car generates in one year.

These facts have been recognized by governments in Canada and the U.S. and by the manufacturers of marine engines for PWCs. All have agreed to reduce emissions over time, but that is small consolation for people living on shallow lakes or in other areas where pollution is an increasing problem. They have to live with the PWCs that people now own. Lake Tahoe, in the United States, has banned all PWCs because of the amount of pollution in water.

The threat to birds that nest on the shore or lake, to marine mammals and to loons has also been well documented. In fact, loon chasing is something of a sport for some PWC drivers.

Similarly, noise is a well-recognized problem. Wildlife or people just 100 feet away from a PWC will be exposed to approximately 75 decibels, which, because of rapid changes in acceleration and direction, may be more disturbing than a constant sound of 90 decibels.

The American Hospital Association recommends hearing protection for occasional sounds above 85 decibels. When they travel in packs, as they often do, the noise from PWCs is multiplied. Here too, PWC manufacturers know that they have a problem, and they have begun to put less noisy models on the market. Again, people will have to live with the noise that older models produce — machines that were purchased years ago for several thousand dollars. In some cases, people have moved to escape the noise. Among the many letters that I received, was this story:



The best times of my life were the quiet times in a canoe at dawn or at dusk in a bay. Just like the atomic bomb put an end to the way we see the world, so did the advent of the PWC change our way of finding relaxation. Three neighbours' teens playing tag on PWCs for hours on end with their parents looking on was for us the signal. Times had changed. We moved away from the water and found peace once again in a clearing in a forest.

Here is another letter from a man living in the Manotick area.

I am a victim of these insidious machines. For twenty years or so, I was the happy owner of a cottage (in Quebec) which I considered the closest thing to paradise on earth. A week would rarely pass without a trip to the cottage. However, for the past 7 years or so, we rarely go there. The sole reason why we no longer go to the cottage is the noise and danger from seadoos.

I mentioned at the outset that one community, Prospect Lake on Vancouver Island, has already banned PWCs through a noise bylaw that has been in place since 1996. The District of Saanich that approved it received the opinion from the Canadian Coast Guard and from a representative of Bombardier, the manufacturer of PWCs, that municipalities do not have the legal right to impose restrictions on PWCs. They agreed to disagree.

• (1450)

The solicitor for Saanich relied on a B.C. Court of Appeal decision, but admits that that bylaw has always been on shaky ground. It has not been tested in the courts, however, many other municipalities that want to act have been dissuaded by the legal opinions to the effect that only the federal government can restrict activity on navigable waters. As a result, they have done nothing.

When residents of Prospect Lake, which is a very small lake, approached their council they were asked to provide evidence of consensus. A telephone survey of 185 residents showed that more than 80 per cent opposed PWCs on that small lake. The Saanich council heard from witnesses and received a letter from the association president, which stated:

Since we do not tolerate motorcycles speeding around the beach or picnic tables in our parks why is anyone surprised when the general public views Jet-Skis, or "personal watercraft" speeding around in the water as intolerable?

Another witness runs a PWC rental operation on a neighbouring lake, Elk Lake, which is three times as large as Prospect Lake. It has few permanent residents. The national rowing team trains on Elk Lake. Saanich council has not received a request to restrict them on Elk Lake, so there are differences.

This bill would follow the Saanich model. It would sort out at the local level where PWCs are welcome. The bill would require

the local authorities to submit proof of consultation when they forward their resolutions for restrictions to the Minister of Fisheries and Oceans. Bill S-26 would allow the minister to deny those resolutions when they impede important considerations of navigation, and it would also exempt law enforcement officials.

In short, Bill S-26 is a reasonable solution. The Saanich bylaw allows for a ticket to be issued to anyone who uses a PWC on Prospect Lake. None has ever been issued. Residents distributed literature and politely talked to people offloading PWCs at the boating ramp. In those cases, individuals left quietly. On occasion police have been called when PWC drivers were on the lake. Warnings have sufficed to prevent them from returning.

Boating safety education has not solved the problem. It is time for Parliament to give communities the choice and the local control that they need to deal with PWCs. I hope that honourable senators will support this bill.

**Hon. Tommy Banks:** Will the honourable senator entertain a question?

**Senator Spivak:** Certainly.

**Senator Banks:** The honourable senator gave a long list of people who have subscribed to this bill and support the banning of PWCs. I should like to suggest another national organization that I know would be happy to sign on, and that is the Alliance Party of Canada. I am certain that they would be delighted to support the PWC ban. Would the honourable senator entertain the idea of an amendment that would preclude and disallow leaders of all political parties from using them?

**Senator Spivak:** I thank the honourable senator for his question. There could be a connection here. It might well be that the reason for the current difficulties encountered by one political leader is his support of the use of jet-skis.

**Hon. Bill Rompkey:** Honourable senators, I have a brief question as well. I noticed that Senator Banks did not want to ban the wetsuits because, of course, some people use those for other purposes, however, I concur with the honourable senator.

I wish to ask another question. Although I support the principle, I wondered about enforcement. I missed some of Senator Spivak's speech and I apologize for that. I understand that the federal government has some rights here, but I know of cases where local associations on lakes have tried to impose these bylaws and, apart from the question of jurisdiction, there is the question of enforcement. How do you enforce a law like that once it is in place? The real difficulty is getting someone with a police presence to actually do something about the problem.

**Senator Spivak:** Honourable senators, all navigable waters are under federal jurisdiction, but I believe the way it works is that enforcement is put in the hands of the local police or the RCMP. I am not sure whether that is true in every province, but I believe that is the way it is handled.



The question of enforcement is a question for all laws. They are difficult to enforce. Experience has shown that once these laws are in place — and the same with boating regulations — people tend to follow the law. The question of increased boating activity is a serious one for PWCs, particularly in places like Ontario. Bill S-26 would do the most good on small and shallow lakes, where there are already many restrictions. I know of a lake called Hunt Lake, where no motors are allowed because it is a very tiny lake. Only canoes and rowboats are permitted there. I believe the question of enforcement is a provincial matter.

**Hon. Roch Bolduc:** Did the honourable senator contact Bombardier to find out whether there is any technological possibility for something less noisy?

**Senator Spivak:** Honourable senators, all the personal watercraft manufacturers are trying to make a less noisy machine. I have not talked to Bombardier, but I am on deck to speak with them. As well, Hill and Knowlton is very interested in talking to me. I hope there will be an occasion, if this bill goes to committee, as I hope it will, for their representatives to come before the committee.

**Senator Bolduc:** Do you have another project for motorbikes?

**Senator Spivak:** Not right now.

On motion of Senator Finnerty, debate adjourned.

[Translation]

## BILL TO MAINTAIN THE PRINCIPLES RELATING TO THE ROLE OF THE SENATE AS ESTABLISHED BY THE CONSTITUTION OF CANADA

### SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Corbin, for the second reading of Bill S-8, to maintain the principles relating to the role of the Senate as established by the Constitution of Canada.—(Honourable Senator Prud'homme, P.C.).

**Hon. Marcel Prud'homme:** Honourable senators, I will vote in favour of this bill without any hesitation. I spent part of last weekend examining four bills on which I should like to speak, one of them being Bill S-8.

Senator Joyal and other senators who have spoken to this bill have been very clear in their presentation. I have read the bill carefully and understood it, I hope, and have nothing specific to point out.

When I agreed to sit in the Senate, I knew that I would be in a Chamber equal to the one I was leaving, with a few rare exceptions such as amendments to the Constitution, where our power had a six-month limitation, as well as the two other examples Senator Joyal has been so kind as to present.

The main reason I wanted to speak now was not out of any ill will, but to give a historical overview of the debates on the clarity bill.

I find it extraordinary to reread what various senators have said, Senators Grafstein and Joyal in particular, because they will recall I was an enthusiastic supporter of their amendment to Bill C-20.

• (1500)

Why would I continue to sit in the Senate if only the House of Commons can make laws as it sees fit?

Since I will probably be the last speaker — I know that you wish to proceed fairly quickly — I will skip all my annotation on the speeches already given on this topic.

I find it strange that senators praised Senators Joyal and Grafstein. People probably did so out of friendship, because we live in a sort of monastery. We have to live together until the age of 75, so we should not be too hard on each other. The compliments paid Senators Joyal and Grafstein — and deservedly so — on Bill S-8 reminded me of the debate on Bill C-20, when these same senators moved an amendment to protect the Senate. You will recall that I have no notes.

[English]

I say that for the new senators. We are 105 senators. Without any notes, I can tell honourable senators that the vote on the amendment was 50 against, 46 in favour and 3 abstentions. That makes 99. The Speaker did not see fit to vote, so that is 100. There were two vacancies, so that is 102. One senator was on stand-by in his office, a very charming man, Senator Roux. I think he would have come to vote if need be, but he was in his office. Two senators missed their planes — Senator Sparrow and Senator Carney. That would have made 105. One can see the division in the Senate.

Of course, the masters of the political institution who happen to not sit here had decided that this bill had to pass without amendment. It was a sad day in my life. I recovered, of course, as I always do, but it was a sad day. We refused ourselves what we so enthusiastically are ready to accept today. I just wanted to remind senators about that.

I will have a longer speech at third reading, point by point on everything that has been said. At least Senator Christensen has logic. She abstained on the bill because she did not like certain aspects of it. The other issue was the protection of the First Nations.

[Translation]

What we call — and I do not like this expression — francophones outside Quebec voting against their own interests. I am still talking about Bill C-20, because I hope that Senator Joyal, who is listening to me, will agree that I am on the same wavelength as he is on this issue. In fact, they have already won. If memory serves me right, I even think that the Supreme Court sided with them on another issue.

I find it strange that, all of a sudden, some senators are so enthusiastic. I regret that. I will not name these senators for reasons of charity and friendship, but I find everything I read — and I read everything — strange.

Today I am joining those who support this bill. It will be considered carefully in committee. We may have some additional comments to make at third reading. I regret that we did not seize the opportunity, when it was given to us by Senators Joyal and Grafstein, to take a stand to protect the Senate.

In their remarks, Senators Joyal, Grafstein, Christensen, Beaudoin and Cools clearly said that, here in the Senate, we should not hesitate to protect this great institution, Parliament.

[English]

Imagine. Last night I attended a Baltic meeting. A minister of the Crown was in attendance, whose name I will not mention because it is not necessary. The minister said, "I am very pleased to see again tonight so many members of Parliament and a few senators." I will continue to object.

Some honourable senators belong to parliamentary associations. This weekend, I know that Senator Grafstein will be participating in the Canada-U.S. group. You see what happens when I do not talk about a certain subject? I happen to be in agreement most of the time with Senator Grafstein. The only matter is the other question that is troubling Mr. Day these days. I will come back to that in a special debate.

Senator Grafstein is going with the Canada-U.S. group, and he will remember that I wrote two reports at the request of the two Speakers. I said that if we were to abolish all parliamentary associations, there is one that should remain, and it is Canada-U.S., even though I have only been with the group once. Keep me in mind if someone drops out. I am interested in Canada-U.S. relations because they are the most important for our own interests.

Another group is chaired very ably by Senator Finestone, so she can also enter the debate. We have other chairmen of committees here. They should pass the word around that Parliament is not members of Parliament and senators. All of us here — and I look at Senator Kinsella and other senators — are members of Parliament, but senators. I would repeat for the benefit of new senators that we should correct people when they say things like what I heard last night.

Mr. Clerk, please tell your staff that when they make reports — and I am not blaming you; you are an excellent clerk — they should not say that five members of Parliament attended the meeting plus three senators. They should say that eight members of Parliament attended the meeting last night, five members of the House of Commons and three senators.

The Baltic meeting last night was presided over very ably by Senator Andreychuk, but now I am getting away from speaking to Bill S-8. I see His Honour smiling, and he is about to call me to order.

I am very pleased that Senator Joyal and Senator Grafstein saw fit to prepare a very serious bill so that members of the Senate will remember that at times it is not wrong to show a little more independence. That is what Canadians expect from us. They do not expect the Senate to be a rubber stamp. They want more independence from us. As Senator Joyal and others have said, the Fathers of Confederation created two Houses of Parliament because they were afraid of the domination of one.

I remind honourable senators that when Canada was created, as we know it, there were 72 senators.

• (1510)

There were 24 for Quebec — and forget Quebec if it makes you dizzy. There were 24 for Ontario and 24 for the Atlantic. Divided in two, that means 12 for Nova Scotia and 12 for New Brunswick. Not many people remember that. When P.E.I. joined, they did not add senators, they took off two from Nova Scotia and two from New Brunswick. In that way, it became 24, always having in mind the equilibrium.

When the four Western provinces were created, they were given 24 seats, always keeping in mind equilibrium. Then we started losing sight when Newfoundland joined. That is when we totally lost the balance. Instead of taking some seats away from the 24 existing seats in the Atlantic, they added six. After that, one was added for the Northwest Territories and eventually one for Yukon, which brings us to today's 105.

We have a mission. All senators, very strangely now after the sad debate we had on Bill C-20, agree, and rightfully so, with what Senators Grafstein and Joyal are trying to put to us today. How can I disagree? I have lived with them in difficult circumstances. I am certainly in favour of sending this bill for further study. I thank them for having put the matter before us. I thank all senators who have participated in the debate because, very strangely, they were all in favour of the bill. I will now watch to see if, unanimously, we will send this bill to committee for further study. I hope that I can find the time to go and listen, not to participate, but listen to the views of the very excellent members of the Standing Senate Committee on Legal and Constitutional Affairs so ably chaired by Senator Milne.

Today is my day to be nice. I must have something else in the back of my mind. I am very happy to have participated in the debate. I do not wish to take questions. I am supposed to be the last speaker on this bill. I thank honourable senators. I look forward to seeing you in committee.

**The Hon. the Speaker:** Are honourable senators ready for the question?

**Hon. Senators:** Question.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.



## REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when shall this bill be read a third time?

On motion of Senator Joyal, bill referred to the Standing Committee on Privileges, Standing Rules and Orders.

**EMPLOYMENT INSURANCE ACT  
EMPLOYMENT INSURANCE (FISHING) REGULATIONS**

**BILL TO AMEND—THIRD READING**

On the Order:

Resuming debate on the motion of the Honourable Senator Cordy, seconded by the Honourable Senator Chalifoux, for the third reading of Bill C-2, to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations,

And on the motion in amendment of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Stratton, that the Bill be not now read a third time but that it be amended in clause 9, on page 4, by deleting lines 14 to 20.

**The Hon. the Speaker:** Honourable senators, it being 3:15 p.m., pursuant to the order adopted by the Senate on Tuesday, May 8, 2001, it is my duty to interrupt the proceedings for the purpose of putting the deferred vote on the motion in amendment of Senator Murray, seconded by the Honourable Senator Stratton.

Pursuant to rule 66(3), the bells to call in the senators will be sounded for 15 minutes.

Call in the senators.

• (1530)

Motion in amendment of Senator Murray negated on the following division:

**YEAS**

**THE HONOURABLE SENATORS**

Andreychuk	Kinsella
Angus	LeBreton
Atkins	Lynch-Staunton
Beaudoin	Meighen
Bolduc	Murray
Buchanan	Nolin
Cohen	Oliver
Comeau	Rivest
Di Nino	Rossiter
Doody	Spivak
Forrestall	Stratton
Johnson	Tkachuk— 25
Kelleher	

**NAYS**

**THE HONOURABLE SENATORS**

Austin	Kenny
Bacon	Kirby
Banks	Kolber
Bryden	Kroft
Carstairs	Losier-Cool
Chalifoux	Maheu
Cook	Mercier
Cools	Milne
Corbin	Moore
Cordy	Morin
De Bané	Pearson
Fairbairn	Pépin
Ferretti Barth	Poulin
Finestone	Poy
Finnerty	Prud'homme
Fitzpatrick	Robichaud
Fraser	Roche
Furey	Rompkey
Gauthier	Setlakwe
Gill	Stollery
Grafstein	Taylor
Graham	Tunney
Hervieux-Payette	Watt
Hubley	Wilson — 49
Joyal	

**ABSTENTIONS**

**THE HONOURABLE SENATORS**

Nil

**The Hon. the Speaker:** The question, honourable senators, is on the motion of Senator Cordy, seconded by the Honourable Senator Chalifoux, for third reading of Bill C-2, to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations.

Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Agreed.

**Some Hon. Senators:** On division.

Motion agreed to and bill read third time and passed, on division.



*[Translation]***BUSINESS OF THE SENATE**

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate, I move that all items on the Order Paper stand in their place until the next sitting of the Senate.

*[English]*

**The Hon. the Speaker:** Is that agreed, honourable senators?

**Hon. Senators:** Agreed.

The Senate adjourned until tomorrow, Thursday, May 10, 2001, at 1:30 p.m.



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CANADA

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37th PARLIAMENT

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VOLUME 139

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NUMBER 35

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OFFICIAL REPORT  
(HANSARD)

Thursday, May 10, 2001

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THE HONOURABLE ROSE-MARIE LOSIER-COOL  
SPEAKER *PRO TEMPORE*



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## THE SENATE

Thursday, May 10, 2001

The Senate met at 1:30 p.m., the Speaker *pro tempore* in the Chair.

Prayers.

### DISTINGUISHED VISITOR IN THE GALLERY

**The Hon. the Speaker *pro tempore*:** Honourable senators, I draw your attention to the presence in our gallery of a distinguished guest: Mr. Mitchell Sharp, former parliamentarian, one of Canada's most outstanding parliamentarians.

On behalf of all honourable senators, I bid you welcome to the Senate of Canada and wish you a happy birthday tomorrow.

**Hon. Senators:** Hear, hear!

## SENATORS' STATEMENTS

### THE HONOURABLE MITCHELL SHARP

#### CONGRATULATIONS ON NINETIETH BIRTHDAY

**Hon. Richard H. Kroft:** Honourable senators, I rise today to recognize an important milestone in the life of a truly great Canadian: The Honourable Mitchell Sharp. I do so from a very personal perspective; over the past 35 years, I have been proud and privileged to have him as my employer, mentor and friend.

Tomorrow, Mitchell Sharp will celebrate his ninetieth birthday. I believe it is fair to say that he is unique among the public figures of our time. While he had the great advantage of being born, brought up and educated in Winnipeg, with a bit of additional time in England, it has been here in Ottawa that he has made his place in Canadian history.

Time permits only a brief summary of Mitchell Sharp's career. He came to Ottawa in 1942 to join the wartime administration. He went on to a distinguished career as a public servant, most notably as Deputy Minister of Trade and Commerce, as it was then called, in the Department of Finance.

In 1962, he entered electoral politics and began another remarkable career, including service as the Minister of Finance, Secretary of State for External Affairs, and Leader of the Government in the House of Commons.

Following his retirement from political life, Mitchell Sharp opened yet another chapter, which included heading the Northern Pipeline Agency and various important studies and commissions. Today, his service continues as personal adviser to the Prime Minister.

At the same time, he is an imaginative and devoted supporter of the arts, with a special love of music. He is a driving force behind the National Arts Centre, its orchestra and much else.

Honourable senators, while the foregoing accomplishments are extraordinary, they do not in themselves constitute the most important contribution Mitchell Sharp has made to Canada. Beyond the facts of his record, he stands for something very special to Canadians in every part of our country. In his long life of service, he has identified the highest standards of integrity, conduct and judgment. He has provided a benchmark that is unequalled in contemporary public life.

Finally, Mitchell Sharp has made another contribution, less known but treasured by those who have been the beneficiaries. Throughout public and private life, in Canada and abroad, a people whose lives he has touched, people he has tutored, mentored and befriended. Our Prime Minister is certainly the best known of these, but there are many more whose lives are richer and more productive because of him. As one of those, I am ever grateful.

Honourable senators, I take great pleasure in voicing thanks and congratulations of all members of this chamber and Canadians everywhere on this wonderful occasion.

Happy birthday, Mitchell!

**Hon. Senators:** Hear, hear!

[Translation]

## NATIONAL CAPITAL

### RESOLUTION BY OTTAWA CITY COUNCIL ON BILINGUAL STATUS

**Hon. Serge Joyal:** Honourable senators, last night, at a City of Ottawa council meeting, the elected officials of the new City of Ottawa, returned, by a vote of 17 to 5, to the bilingualism policy in effect prior to its amalgamation with ten other municipalities of the National Capital Region.

The resolution passed provided that the City of Ottawa would ask the government of the Province of Ontario to amend the 1999 law on the City of Ottawa in order to require that the government of the City of Ottawa and the delivery of municipal services be in French and English, in accordance with the policy on bilingualism adopted by the city council.

The democratic decision by the council must be recognized and tribute paid, and the qualities exhibited by Mayor Chiarelli and the majority of the members of council applauded.

The Senate spoke on two occasions of the importance of having the national capital, the seat of the Government of Canada, reflect the bilingual nature of our country as defined in the Constitution Act. Further to the decision by the Ottawa city council, it will be up to the Ontario legislature to enshrine the current policy, which, although desirable and appropriate, does not make the country's capital city a bilingual city under the meaning of the Constitution Act, either in its effect or in its scope or in terms of guarantees.

• (1340)

I will quote, if I may, from a letter from the Mayor of Ottawa, sent to me personally last November 27 in response to my letter of November 14:

As for the question of institutionalizing bilingual status, I will try to be as clear as possible in a debate that occasionally lacks clarity and lucidity...I too am distrustful of any status that lacks a definition in law, because it paves the way for court challenges by those interested in constantly challenging the justification and the exact extent of official bilingualism before the courts.

It is clear that the law that might be passed by the Ontario legislature will only give legal protection, not constitutional, for the guaranteed delivery of certain services in French. Past decisions by the Ontario government in the Montfort Hospital — *Lalonde v. Ontario*, November 29, 1999 — and Simcoe County School Board — *Marchand v. Simcoe County Board of Education et al* — cases illustrate the limitations inherent in legislative rather than constitutional protection.

Having thoroughly reviewed the legislation and legal precedents, honourable senators, I am still convinced that, with section 91, the Parliament of Canada has, through the general power to enact legislation for peace, order and good government, the required jurisdiction to recognize the National Capital Region as having bilingual status under Canada's constitution.

I believe it would be desirable to first give the Ontario government the opportunity to comply with the City of Ottawa's request and to reserve any exercise of our jurisdiction and political and constitutional responsibility concerning the capital of our country until the decision of the Ontario government is known.

We should, however, make known to the municipal authorities our appreciation of the decision reached at their meeting last night.

**Hon. Jean-Robert Gauthier:** Honourable senators, I am wholly behind my colleague Senator Joyal, body and soul.

Yesterday, the first step was taken by the new Ottawa city council. I am, as my colleagues can see, very pleased with the decision, supported by a very heavy majority of council members, to designate the City of Ottawa, the capital of our country, a bilingual city in which both official languages of this country will have equal status.

This is an important step in the right direction, after much hard work by the mayor and a significant number of councillors.

This linguistic policy will mean that all Canadians can receive municipal services in both of the country's official languages, English and French. In order to ensure that this linguistic policy remains in place permanently, the government and the legislature of Ontario will have to designate Ottawa an officially bilingual municipality. I have already explained on several occasions — as has Senator Joyal — the advantages of such a designation.

On December 16, 1999, the Senate unanimously passed the following motion:

That, in the opinion of the Senate of Canada, Ottawa, Canada's capital city, should be officially bilingual.

I moved this motion. Senator Kinsella seconded it and it was unanimously passed. The senators of this Chamber played an important role in this debate. They reached a unanimous decision over 18 months ago on the issue. I thank all senators today for their participation and their unconditional support for this initiative of several months ago.

As a native of Ottawa, having lived here all my life, you will understand how very pleased I am at this declaration welcoming all Canadians to their national capital, which will be able to receive and serve them in the official language of their choice.

Ottawa, Canada's capital, has a momentous future ahead of it. I dream of the day when Canadians will be as proud of Ottawa, their capital, as the French are of Paris or the English of London.

## CITY OF MONTREAL

### TRIBUTE TO CIVILITY OF CITIZENRY

**Hon. Marie-P. Poulin:** Honourable senators, today I want to pay tribute to the city of Montreal and to the humanism of its citizens. Last week, I fell badly when I was downtown. Within seconds, I was surrounded by people who were offering me their help. My pain was so intense that I could no longer move or talk. All of a sudden, I heard someone say: "I am a nurse. Can I help you?"

That professional, who was driving by, stopped and stayed by my side until the paramedics arrived. A store even sent a security agent to help me. All these people, including the paramedics, the nurse at the reception of the Royal Victoria's emergency room and the members of the medical team on duty, displayed flawless professionalism and genuine empathy.

[English]

Honourable senators, all of us here read articles about the indifference of people on the streets of larger cities and about the lack of caring in our health care system. I stand today as a senator from Northern Ontario to pay tribute to Montreal. We, as Canadians, can be proud not only of her beauty, her vitality and her diversity but, above all, her humanity.



## UNITED NATIONS

### DISPLACEMENT OF UNITED STATES ON HUMAN RIGHTS COMMISSION

**Hon. Jeremiah S. Grafstein:** Honourable senators, next week Parliament is co-hosting the forty-second annual meeting of the Canada-U.S. Interparliamentary Group in Western Canada. As Canadian co-chair, I have pondered the role of the United States with respect to Canada. Yet who can fail to consider the United States' paramount role in the evolution of international rule of law and American leadership in projecting a human rights agenda around the globe in the last century? Therefore, it came as no small shock when we discovered two weeks ago that the European bloc, led by France, and the Asian bloc, led by China, were successful in displacing the United States as a sitting member of the UN Commission on Human Rights for the first time since its creation in 1947.

Honourable senators may recall that it was due to the efforts of Eleanor Roosevelt that this commission was first established. Now, instead of the United States, we have France, Sweden and Austria representing the North American and European bloc. Other nations, those exemplars of human rights nations, include Algeria, China, Saudi Arabia, Uganda, Armenia, Pakistan, Syria and Vietnam.

It is regrettable that the staunchest promoter of human rights around the globe has been displaced, not because of its failure to promote a human rights agenda but, rather, primarily because it has forced the international community to confront human rights in a way that no other region, bloc or nation has been prepared to project so singularly and so consistently. Only the United States publishes annually a region-by-region analysis of nations that fall below international human rights norms.

Honourable senators, may I recommend that you read a very short book entitled *On The Law of Nations* by former U.S. Senator Daniel Moynihan. It gives an extraordinary account of the role that international law has played in the foreign policy of the United States. It is a primer for all those who are interested in the rule of law in international relations.

Returning to the exclusion of the United States from the United Nations Human Rights Commission, I can best sum up by quoting these words from another antique senator that express for me the current situation: *O tempora! O mores!*

### MR. STAN DARLING

**Hon. Jim Tunney:** Honourable senators, it was a delight to hear the tribute to an illustrious Canadian, the Honourable Mitchell Sharp. I should like to pay tribute to someone who was a confrère of his for many years in the other place, who was dean

of that place and who belonged to the party of Sir John A. Macdonald.

I rise today because Stan Darling also is celebrating his ninetieth birthday. The very unique aspect of this is that he lives in Parry Sound-Muskoka, which riding he represented for many years.

• (1350)

Yesterday morning he drove himself from Muskoka to Toronto to attend a prayer breakfast. Yesterday afternoon he drove himself to Ottawa to attend the prayer breakfast at the Château Laurier this morning; a tribute to what I would call the determination and credit of the longevity of some of our politicians.

## ROUTINE PROCEEDINGS

### KANESATAKE INTERIM LAND BASE GOVERNANCE BILL

#### REPORT OF COMMITTEE

**Hon. Thelma J. Chalifoux,** Chair of the Standing Senate Committee on Aboriginal Peoples, presented the following report:

Thursday, May 10, 2001

The Standing Senate Committee on Aboriginal Peoples has the honour to present its

#### THIRD REPORT

Your Committee, to which was referred the Bill S-24, 2000, Act to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence, has examined the said Bill in obedience to its Order of Reference dated Thursday, April 5, 2001, and now reports the same without amendment.

Respectfully submitted,

THELMA J. CHALIFOUX  
Chair

**The Hon. the Speaker pro tempore:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Chalifoux, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.



## TOBACCO YOUTH PROTECTION BILL

### REPORT OF COMMITTEE

**Hon. Nicholas W. Taylor**, Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, presented the following report:

Thursday, May 10, 2001

The Standing Senate Committee on Energy, the Environment and Natural Resources has the honour to present its

### THIRD REPORT

Your Committee, to which was referred Bill S-15, An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada, has, in obedience to the Order of Reference of Thursday, March 1, 2001, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

NICHOLAS W. TAYLOR  
*Chair*

**The Hon. the Speaker pro tempore:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Taylor, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

### FISHERIES

#### BUDGET AND REQUEST FOR AUTHORITY TO ENGAGE SERVICES AND TRAVEL—REPORT OF COMMITTEE PRESENTED

**Hon. Gerald J. Comeau**, Chair of the Standing Senate Committee on Fisheries, presented the following report:

Thursday, May 10, 2001

The Standing Senate Committee on Fisheries has the honour to present its

### SECOND REPORT

Your Committee, which was authorized by the Senate on March 13, 2001, to examine and report upon the matters relating to the fishing industry, respectfully requests, that it be empowered, to engage the services of such counsel and technical, clerical and other personnel as may be necessary, and to adjourn from place to place within Canada for the purpose of such study.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget

submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

GERALD COMEAU  
*Chair*

(For text of report, see today's Journals of the Senate, Appendix "A", p. 532.)

**The Hon. the Speaker pro tempore:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Comeau, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[Translation]

### ILLEGAL DRUGS

#### BUDGET—REQUEST FOR AUTHORITY TO ENGAGE SERVICES AND TRAVEL—REPORT OF SPECIAL COMMITTEE PRESENTED

**Hon. Pierre Claude Nolin**, Chairman of the Special Committee on Illegal Drugs, presented the following report:

### FIRST REPORT

Thursday, May 10, 2001

Your Committee, which was authorized by the Senate on March 15, 2001 to reassess Canada's anti-drug legislation and policies, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical, and other personnel as may be necessary, and to adjourn from place to place within and outside Canada.

Pursuant to Section 2:07 of the *Procedural Guidelines for the Financial Operations of Senate Committees*, the Budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report of said Committee are appended to this report.

Respectfully submitted,

PIERRE CLAUDE NOLIN  
*Chair*

(For text of report, see today's Journals of the Senate, Appendix "B", p. 542.)

**The Hon. the Speaker pro tempore:** Honourable senators, when shall this report be taken into consideration?

**Senator Nolin:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(g), I move that this report be now adopted.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Some Hon. Senators:** No.

**Senator Nolin:** Honourable senators, I move that this report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

On motion of Senator Nolin, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[English]

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

### FIFTH REPORT OF COMMITTEE PRESENTED

**Hon. Richard H. Kroft,** Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Thursday, May 10, 2001

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

### FIFTH REPORT

Your Committee recommends that the following funds be released for fiscal year 2001-2002.

#### Banking, Trade and Commerce (Legislation)

Professional and Other Services	\$ 13,000
Transport and Communications	\$ 2,500
Other Expenditures	\$ 4,000
<b>Total</b>	<b>\$ 19,500</b>

#### Human Rights (Legislation)

Professional and Other Services	\$ 3,000
Transport and Communications	\$ —
Other Expenditures	\$ 1,500
<b>Total</b>	<b>\$ 4,500</b>

#### Legal and Constitutional Affairs (Legislation)

Professional and Other Services	\$ 8,200
Transport and Communications	\$ 3,160
Other Expenditures	\$ 1,000
<b>Total</b>	<b>\$ 12,360</b>

Respectfully submitted,

RICHARD KROFT  
*Chair*

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Kroft, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

• (1400)

### SIXTH REPORT OF COMMITTEE PRESENTED

**Hon. Richard H. Kroft,** Chairman, of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Thursday, May 10, 2001

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

### SIXTH REPORT

Your Committee recommends that, effective April 1, 2001, pay scales of unrepresented employees be increased by 2.5 per cent.

Further, your Committee recommends that parental leave provisions equivalent to those accorded the Public Service as stipulated in Bill C-32, be granted to Senator's staff as well as to Senate unrepresented employees.

Respectfully submitted,

RICHARD KROFT  
*Chair*

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Kroft, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

## CANADA-EUROPE PARLIAMENTARY ASSOCIATION

PARLIAMENTARY ASSEMBLY OF ORGANIZATION ON SECURITY AND COOPERATION IN EUROPE

STANDING COMMITTEE  
MEETING, FEBRUARY 22-23, 2001—REPORT OF  
CANADIAN DELEGATION TABLED

**Hon. Jerahmiel S. Grafstein:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian delegation of the Canada-Europe Parliamentary Association, OSCE, to the Organization of Security and Cooperation in Europe Parliamentary Assembly, OSCEPA Standing Committee meeting in Vienna, Austria, February 22-23, 2001.



## QUESTION PERIOD

### UNITED NATIONS

#### DISPLACEMENT OF UNITED STATES ON HUMAN RIGHTS COMMISSION

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, during Senators' Statements, Senator Grafstein drew our attention to a situation at the United Nations Human Rights Commission. As honourable senators will recall, shortly after the signing of the UN Charter in 1945, the first functional commission of the United Nations was the commission on human rights. As indicated in Senator Grafstein's statement earlier, last week the United States was voted off the Human Rights Commission, which is made up of 53 countries. The membership is by country and the country capacity, not by individuals in their individual capacity.

My question to the minister is how did Canada vote in that election?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I must inform the honourable senator that I do not know how Canada cast its vote at that particular session, but I will attempt to obtain the information for him.

**Senator Kinsella:** Honourable senators, I appreciate the minister making that inquiry. As well, could she find out what was the foreign policy principle upon which the Government of Canada was acting as they concluded the vote the way they did? What is important is why they voted the way they voted.

Second, could the minister also find out the position of Canada's representative during the informal lobbying period, which extends over a considerable period of time? The United States is in the group of countries that includes Western Europe and Canada, and it would be of great interest to this house if we knew what position the Canadian representatives took during the lobbying efforts.

Finally, could the minister ask her informants as to which other countries in the Western European-North American bloc were also candidates?

**Senator Carstairs:** Honourable senators, the honourable senator has put forward some interesting questions. If it is possible to determine what was the foreign policy principle, what was the position of our representative during the informal lobbying period, and who were the other countries in the western bloc to which he refers, I will try to obtain that information and get it to him at the earliest possible time.

### NATIONAL DEFENCE

#### POSSIBLE SALE OF PORTION OF CFB SHEARWATER

**Hon. J. Michael Forrestall:** Honourable senators, I have a few questions for the Leader of the Government in the Senate.

One has to do with a matter raised earlier with the Leader of the Government.

Could I ask the minister whether she has had any luck in dealing with her colleagues in cabinet with respect to blocking the transfer of the Shearwater north-south runway to the Canada Lands Company and through them to the Halifax regional municipalities, if for no other reason — and there are certainly a number of reasons, not the least of which is NATO — than to save the Shearwater Air Show, the largest air show in eastern North America?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I am sure the honourable senator is not asking me to divulge cabinet confidences. I can assure him that those concerns have been taken forward. I hope that the honourable senator will get his answer shortly.

#### STATUS OF DISASTER ASSISTANCE REACTION TEAM

**Hon. J. Michael Forrestall:** Honourable senators, can the Leader of the Government confirm that the Canadian Forces Disaster Assistance Reaction Team, known as DART, is a hollow shell with no assigned airlift equipment or personnel and, certainly, no funding?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I cannot inform the senator this afternoon what the particular Canadian Forces team he referred to as DART has as its present capacities. If that information is available, I will bring it to the honourable senator with the greatest dispatch.

### INDUSTRY

#### EFFORTS OF GOVERNMENT TO ESTABLISH SHIPBUILDING POLICY

**Hon. Donald H. Oliver:** Honourable senators, my question is for the Leader of the Government in the Senate. It relates to Canada's shipbuilding policy.

I have received a communication from the Trade Director General of the European Commission. It indicates that the European Commission will recommend taking a case against South Korea through the World Trade Organization dispute settlement procedure if there is no amicable solution to address the unfair trade practices in its shipbuilding industry by June 30. That situation arises from the commission's investigation which established that South Korean shipyards have benefited from substantial subsidies, contravening the WTO 1994 subsidies agreement.

My question is: What is the Canadian government doing in relation to establishing a new shipbuilding policy for Canada?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as the honourable senator knows, there have been discussions as to the evolution of a Canadian shipbuilding policy in this country. As to the particular position with respect to South Korea that he indicated in his question, I will attempt to find the information for him.



[Translation]

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table in the Senate the delayed answers to four questions: the questions raised by Senator Comeau on May 1 and 3, 2001, regarding the census questionnaire; the question raised on April 25, 2001, by Senator Forrestall regarding the replacement of Sea King helicopters; and the questions raised on April 24, 2001, by Senator Carney regarding the Summit of the Americas and the formulation of the North American Energy Working Group, and on May 3, 2001, regarding the West Coast hake fishery.

### STATISTICS CANADA

#### CENSUS QUESTIONNAIRE—OMISSION OF ACADIANS AS CULTURAL GROUP

*(Response to questions raised by Honourable Gerald J. Comeau on May 1 and May 3, 2001)*

Respondents can report the ethnic origin they feel best applies, whether or not it is listed as an example.

The question gives 25 examples of ethnic origins. Examples are provided only as a guide on how to answer this question. People living in Canada have many different ethnic origins and it not possible to list all of them on the census questionnaire.

The groups generally listed as examples on the question are based on responses to the 1996 Census, beginning with the largest. The last three examples (Lebanese, Chilean and Somali) have been included to represent various geographic areas while terms such as Cree, Métis and Micmac have replaced the term Aboriginal.

Acadian was not among the most frequently reported ethnic origin. In 1996, there were 57,000 persons who reported Acadian origins. Acadian responses will be published with all other ethnic origins in January 2003.

Statistics Canada will review this issue as part of its plans for the 2006 Census.

### NATIONAL DEFENCE

#### REPLACEMENT OF SEA KING HELICOPTERS—INDEPENDENT LEGAL ADVICE ON DISPUTE BETWEEN EH INDUSTRIES AND GOVERNMENT

*(Response to question raised by Hon. J. Michael Forrestall on April 25, 2001)*

The Government of Canada did **not** retain independent legal counsel in regard to the EH Industries complaint regarding the Maritime Helicopter Project.

## SUMMIT OF THE AMERICAS

#### FORMULATION OF THE NORTH AMERICAN ENERGY WORKING GROUP—REQUEST FOR INFORMATION

*(Response to question raised by Honourable Pat Carney on April 24, 2001)*

#### Terms of Reference

Canada is currently working with the Governments of Mexico and the United States to develop a terms of reference for a trilateral working group on energy. The terms of reference will require approval from all three governments.

With regards to the issue of a continental energy policy, it is important to distinguish between that and the better functioning of energy markets in North America. The Working Group will not be developing a common policy for the region. Rather, it will be a valuable means of fostering communication and co-ordinating efforts in support of efficient North American energy markets that help our governments meet the energy needs of our peoples.

#### Canadian Interests

From a Canadian perspective, goals for the working group should be to:

foster communication and co-operation among the governments and energy sectors of the three countries on energy-related matters of common interest; and

enhance North American energy trade and interconnections consistent with the goal of sustainable development, for the benefit of all.

It is our expectation that the Working Group will exchange views and share information on factors affecting North American energy. Such areas of exchange may include discussions on:

policies and programs;

market developments and anticipated demand and source of supply; and

regulatory structures, interconnections, technical specifications, and technology research and development.

We will ensure that Working Group co-operation will fully respect the domestic policies, divisions of jurisdictional authority, and existing trade obligations so that it will complement existing bilateral programs and relationships.

## Leadership

Natural Resources Canada, the Mexican Secretariat of Energy, and the U.S. Department of Energy will jointly chair and provide leadership for the Working Group.

The U.S. has offered to host the first meeting of the Working Group, probably in late June.

## FISHERIES AND OCEANS

### BRITISH COLUMBIA—COLLAPSE OF HAKE FISHERY

*(Response to question raised by Honourable Pat Carney on May 3, 2001)*

The 2000 hake fishery, which opened last May, turned out to be atypical. The fish did not show up in normal areas off Vancouver Island near Ucluelet, where they had been found for the past 20 years.

As a result of this anomaly, the major processors were forced to shut down plants in Ucluelet and Port Alberni, because there was insufficient fish to process.

It is too early to determine whether the hake distribution will be the same in 2001. A triennial survey will be conducted this summer and it may help explain the change in hake distribution.

The Minister of Fisheries and Oceans is currently reviewing options for setting the 2001 TAC. As well, to help processing plants, the government is considering granting port access to US hake vessels.

• (1410)

## ORDERS OF THE DAY

### MARINE LIABILITY BILL

#### MESSAGE FROM COMMONS

**The Hon. the Speaker** *pro tempore* informed the Senate that a message had been received from the House of Commons returning Bill S-2, respecting marine liability, and to validate certain bylaws and regulations, and acquainting the Senate that they have passed this bill without amendment.

### ROYAL ASSENT

#### NOTICE

**The Hon. the Speaker** *pro tempore* informed the Senate that the following communication had been received:

## RIDEAU HALL

May 10, 2001

Mr. Speaker,

I have the honour to inform you that the Honourable Ian Binnie, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy of the Governor General, will proceed to the Senate Chamber today, the 10th day of May, 2001, at 4:00 p.m., for the purpose of giving Royal Assent to certain bills.

Yours sincerely,

Anthony P. Smyth  
Deputy Secretary Policy, Program and Protocol

The Honourable  
The Speaker of the Senate  
Ottawa

## BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, under "Government Business," we would like to begin with Item No. 2, second reading of Bill C-3, and then come back to Item No. 1.

*[English]*

### ELDORADO NUCLEAR LIMITED REORGANIZATION AND DIVESTITURE ACT PETRO-CANADA PUBLIC PARTICIPATION ACT

#### BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Banks, seconded by the Honourable Senator Ferretti Barth, for the second reading of Bill C-3, to amend the Eldorado Nuclear Limited Reorganization and Divestiture Act and the Petro-Canada Public Participation Act

**Hon. J. Trevor Eyton:** Honourable senators, the purpose of this bill, as Senator Banks pointed out the other day, is twofold: to allow greater foreign ownership of Petro-Canada and Cameco and to provide these two companies with better opportunities for strategic management of their assets within their respective industries.

As many honourable senators know, I am not a great fan of state interference in the economy. I am opposed unless it can be clearly demonstrated that it will be beneficial. In the case of Petro-Canada, for example, I did not agree when the government created it in 1975, and I was happy in 1991 when the subsequent government finally began the process of privatization.

I believe this bill is a good one, if long overdue. Petro-Canada is a good solid company, and the same can be said about Cameco.



I realize that those of us who support the free market system have critics, in fact perhaps many critics. I imagine for the NDP that this must be a pretty unpopular bill, representing the death rattle of a national dream and so forth. However, in these days of global competition, reality has to prevail over ideology in any rational discussion of business and commerce. The bottom line here is quite simple: Companies hoping to grow and survive in a marketplace, be they in Canada, North America or the world, need access to capital, and capital comes from investment.

In addition to investment, companies must be able to decide for themselves how best to allocate the funds and assets at their disposition. These decisions have to be based on their own interests and priorities. What is more, these decisions are made transparently and so must be accounted for.

Unfortunately, we are not quite there today with either Petro-Canada or Cameco. Both companies are operating under share-ownership restrictions imposed by their charter legislation — restrictions, by the way, that do not apply to their competitors.

Petro-Canada and Cameco have proven they are viable, sound entities run by competent managers, so I cannot see why they should not be allowed to get on with their businesses free of government interference and fully accountable to their shareholders, including the one or more significant shareholders permitted by this bill.

There are some national interest considerations that have to be taken into account in the case of Cameco. I am referring here to Canadian control of our supply of uranium. However, even with this, I see no reason for any more federal control than is absolutely necessary.

The Government of Canada presently holds 18 per cent of Petro-Canada's shares. If, as I am told, the government has no public policy imperative for holding these shares and if it plays no management role of any kind, it seems to me the next logical move is to sell the 50-odd-million shares the government still holds.

I might add that the proposal in this bill to hold the aggregate non-resident ownership component for Cameco at 25 per cent is still unnecessarily restrictive. I do not see why, for example, it could not be raised to a level of some 40 per cent.

Honourable senators, Canada is first and foremost a trading nation. One quarter of our collective wealth is generated by the sale of goods and services abroad, and one of the most important commodities we trade is natural resources. Resource companies such as Cameco and Petro-Canada are not mom-and-pop operations. They employ thousands of people in every community. They pay millions of dollars in taxes each year and invest millions more in research and development in areas such as sustainable development.

It is a tough, demanding world. These companies need flexibility if they are going to compete successfully. In the past

few years, there has been some major restructuring in the Canadian energy industry and in the world energy industry for that matter. Because of the constraints imposed by the present law, both Petro-Canada and Cameco have been prevented from taking advantage of this trend as fully as they may have. The ability to engage in things like share exchanges, asset pooling and strategic alliances, just like their competitors, has been impaired. This has been to their disadvantage and to that of the shareholders.

Honourable senators, this bill will lay to rest one of the last vestiges of the National Energy Policy, to which all of us, I think, can say "Thank God." This is no longer 1975 or even 1990. Canadian business and Canadian public policy need to focus on the future. This is especially true of our trading relationships, which has been over a decade now since we entered the free trade agreement with the United States, and it has been almost seven years since NAFTA came into effect.

By any financial measure, free trade has been a great success. Our cross-border trade with the U.S. alone runs in excess of \$400 billion a year. That is over \$1 billion a day. The massive increase in trade has brought an equally substantial number of jobs along with it. In the case of Mexico, our trading relationship has grown steadily since NAFTA was signed. As free trade expands through the southern hemisphere in the coming years, so our relationship with Mexico will grow accordingly.

Honourable senators, the nations of the world exchange an estimated \$3 trillion in goods each year. Canadian firms want to be, and in some cases are, major players in the market, but they must be able to compete on an even footing. The professional naysayers in this country seem to think that trade and competition are dirty words. That is nonsense. Trade is our lifeblood. Canadian companies face competition 24 hours a day at every level and in every market. They cannot hide from the competition. In fact, I would argue that they actively seek it out. However, if these companies hope to win and keep their fair share of markets, they will have to be allowed to function under the same advantages as their competitors. They cannot, as is now the case with Petro-Canada and Cameco, be expected to compete with one hand tied behind their backs.

All things considered, I think this bill is a step forward. It will help Petro-Canada and Cameco to attract additional investment capital to compete on a more even playing field, and it will give them the greater flexibility they need to manage their assets properly. This benefits them and it benefits Canada. Remember that the assets in question all remain in Canada and remain subject to Canadian control.

I urge all honourable senators to support this legislation both when it goes to committee and thereafter.

**Hon. Nicholas W. Taylor:** Honourable senators, would the Honourable Senator Eyton permit a question if there is time?



**Senator Eyton:** Certainly.

**Senator Taylor:** When the two entities the honourable senator talks about were created, the government gave a combination of loans and share conversions. Could the honourable senator tell me whether the loans were all converted to equity, or was only a portion of the loans converted to equity? Could the honourable senator tell me if any outstanding loans were written off by the government? In other words, what do they still owe the taxpayers, if not legally, then morally?

• (1420)

**Senator Eyton:** Honourable senators, I thank the honourable senator for his question. I will confess that I do not know the answer to the question, but I can find out. I do believe that with the ownership permitted by this bill, the two companies will be in a better position to service all of their obligations, including the debt to which the honourable senator refers.

**The Hon. the Speaker *pro tempore*:** Is the house ready for the question?

**Hon. Senators:** Question.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Robichaud, bill referred to the Standing Senate Committee on Energy, the Environment and Natural Resources.

[Translation]

## MOTOR VEHICLE TRANSPORT ACT, 1987

BILL TO AMEND—THIRD READING

**Hon. Marie-Paule Poulin** moved the third reading of Bill S-3, to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts.

She said: Honourable senators, Bill S-3, to amend the Motor Vehicle Transportation Act, was introduced this past January 31. Second reading was on February 6 and it was then referred to the Standing Senate Committee on Transport and Communications.

The committee, headed by the Honourable Senator Lise Bacon, has carried out a thorough study of this bill. As a result of their discussions with a handful of witnesses from the transport industry and interest groups, following on a discussion with the Minister of Transport, two major concerns surfaced.

First, all witnesses voiced concerns about tractor-trailer safety in Canada. Second, they had concerns about the more or less uniform application across Canada of national commercial vehicle safety standards.

Honourable senators, it is fact: Tractor-trailers are involved in a large number of highway fatalities in Canada, in fact some 500 of the total of 3,000 in Canada every year. This is why highway safety, and especially tractor-trailer safety, remains a very important question for our governments.

I would point out that, in 75 per cent of accidents involving tractor-trailers, the rig or the driver was not at fault. It is obvious, therefore, that highway safety has improved over the situation 30 years ago when there were more than 7,000 fatalities a year. Moreover, the number of serious accidents involving trucks has dropped while, at the same time, there has been a marked increase in the number of tractor-trailers. Trucking activities have increased by about 9 per cent yearly for the past ten years.

Honourable senators, trucking is vital to economic growth. The versatility of highway shipping is of inestimable value to cost-effective manufacturing operations. Although progress is obvious, new approaches are still needed to improve safety.

[English]

Honourable senators, the bill provides a new framework for comprehensive national safety standards to be applied consistently across Canada to local, national and international motor carriers. After a thorough review of the bill with witnesses from the industry, the Standing Senate Committee on Transport and Communications agrees with this bill and has reinforced its key objective with amendments concerning the time frame and a comprehensive review. Therefore, I urge all honourable senators to support Bill S-3, as amended.

**Hon. Mira Spivak:** Honourable senators, I commend and thank the Chairman of the Standing Senate Committee on Transport and Communications, Senator Bacon, for enabling the committee to conduct a thorough and revealing study of Bill S-3. It was a very productive meeting of the minds on matters of highway safety. Again, the Senate demonstrated the benefits of focusing on the public interest, both in our debate and in our amendments.

I think that the committee has produced a better bill than the one that was sent to it. That being said, I have one further amendment that I should like to propose at this stage of the bill.

On the face of it, Bill S-3 is primarily about creating regimes throughout the country, not a national regime, to issue safety certificates and safety ratings to bus and truck companies that operate within our borders and internationally. These safety ratings would be publicly available. What better incentive for a company to do what is right and what is in the public interest? It is to everyone's benefit to have a system in place to assess companies from the standpoint of safety and to make safety ratings publicly available. It would benefit trucking companies that operate safely; it would help shippers select safe carriers; it

would benefit drivers who work for these companies; and it would benefit motorists who share the nation's highways with large trucks. To oppose this measure would be like opposing motherhood. In fact, we did not hear from any witness who opposed the concept, nor did we hear that there were devils in the details.

So what is the problem, honourable senators? Why did the committee see fit to amend the bill and to comment on it? The problem, as we repeatedly heard, is that the proposed safety rating regime is just one of 15 mandatory standards and one voluntary standard that comprise the National Safety Code. Implementation of the code was to be an insurance policy. It was to ensure that safety would not be compromised by the 1987 deregulation of extra-provincial trucking.

In fact, federal and provincial governments signed a memorandum of understanding to have the safety code in place by 1990. The provinces were to have put in place the required regulations for all but two of the standards. The federal government retained the right to regulate drivers' hours of work through hours of service regulation. This last standard for safety rating systems, which Bill S-3 addresses, was put in abeyance. Fourteen years later, it would be reasonable to assume that those 16 standards, with the exception of the safety ratings, are in place across the country, but that reasonable assumption would be incorrect.

In February, before we began our committee work, I placed a question on the Order Paper to determine exactly where we stood. I asked of Transport Canada: What is the current status of the implementation of each of the 16 standards of the National Safety Code for motor carriers by each of the provinces and territories?

• (1430)

Many weeks later, I received a surprising response. It referred not to the current status of the implementation but to something described as the Fifth Annual Report to Parliament on Commercial Vehicle Safety in Canada. The Motor Vehicle Transport Act, 1987, which Bill S-3 is amending, required the minister to report annually from 1988 to 1993 on the progress of implementation and on the trends in highway accidents.

The so-called fifth annual report to Parliament was five years late. It was tabled in this chamber on September 24, 1998. In other words, the department did not consider it a priority to meet its obligations to Parliament laid out in section 35 of the existing act. Bill S-3 would have eliminated any reporting requirement on these matters. The committee's significant amendment restores the requirement for annual reports.

The fifth report to Parliament detailed progress in implementing the code to January 1997. It contained a chart of standards on such matters as vehicle maintenance, trip inspection, security of loads, medical standards for drivers and hours of service. Half of the 16 standards were not implemented

at all across the board; that is, in every province and territory. A of the remaining standards, save one, the voluntary standard for first aid training for drivers, were implemented inconsistently. In some cases, the provincial deviations from the national standard were minor. In many cases, there were significant deviations.

The report contains descriptions of these deviations that fill three pages. For example, on vehicle maintenance, Prince Edward Island had not implemented the standard; Ontario and Quebec had not implemented parts of the standard; and Saskatchewan had applied it only to trucks weighing more than 22 tonnes.

As Mr. David Bradley, head of the Canadian Trucking Alliance, the chief industry association, has said:

The National Safety Code upon which the ratings system would be based is neither national, nor is it a code. Indeed, not one of the 16 safety code standards, agreed to by the provinces in 1988...has been adopted across the country.

The CTA and highway safety advocacy groups such as CRASH often do not see eye to eye. They certainly do, however, on the matter of code implementation. Bob Evans, the Executive Director of CRASH, posed a rhetorical question to the committee. He stated:

If we cannot agree on trucking safety standards within Canada, how can we meaningfully expect to regulate safety of trucking operations here by our NAFTA partners?

It is a good question.

Honourable senators, I have said that the department's response to my Order Paper question was surprising. It was surprising because it summarized the findings of the fifth report to Parliament as follows:

According to the last report, each of the 16 standards have been substantially implemented in each of the jurisdictions, with few exceptions.

Perhaps I could use a word other than "surprising." I did question an official in committee about it and was told that the status of implementation could be open to interpretation. I do not think there is sufficient "wiggle room" in the department's own document or in the clear opinion of the industry and safety advocates to conclude that the standards have been substantially implemented with few exceptions. Even the minister agreed. I said he wants to "move further and be bolder as the month progresses."

I also found the response to the Order Paper question surprising because I had clearly asked for the current status of implementation, not that of four years ago. The same official, when asked whether we would receive the information, replied that it would require surveying the provinces. In other words, even the department does not know.



The committee's amendment to restore the requirement for annual reporting should solve that problem, but the larger problem persists: how to make the provinces live up to the promises made 14 years ago. The federal government clearly has the constitutional authority over extra-provincial trucking, which constitutes 80 per cent of all trucking. The federal government exercises that constitutional authority when it regulates a driver's hours of work in accordance with the NSC hours of service standards. All else it chooses to delegate to the provinces.

There was considerable testimony and debate at the committee about hours of service. We heard about the long hours that the drivers can legally be required to work. We heard how fatigue relates to safety, and we heard in some detail about the last publicly available proposal to change the standard of federal regulation to dramatically increase the hours that drivers can be forced to work. This change would require truckers on our highways to work 84 hours a week. The majority of Canadians surveyed on this issue are opposed to that.

I wish to place on the record something the committee heard from a former trucker regarding road rage. He said:

Most of the anger out there is because we are not getting enough rest. I do not know where they came up with the idea that we can drive for 14 hours and then take eight hours off...I talked to three guys in their trucks with my CB while coming here. None of the drivers know that this law will come through. When they hear it, they cannot believe it.

Honourable senators, federal-provincial consultations on a new hours of service code have been taking place for years through the Canadian Council of Motor Transport Administrators. A CCMTA committee advanced the 84 hours a week maximum more than a year ago. Public consultations were promised, but the provinces refused and the federal government is not proceeding.

No sooner had our committee agreed to proceed to clause-by-clause study on this bill that the minister requested the Commons committee to hold hearings on drivers' hours of service. This was the extent of the public consultation.

Honourable senators, I take exception to the officials' decision not to share the substance of a document, which is a brand new proposal for revisions. They were not shared with our committee when we were clearly asking questions on the matter.

The new report includes new matters that come as a surprise to some members of the CCMTA project group that authored it, but the basics remain the same: 70 hours of driving, followed by 36 hours off, followed by 14 hours of driving. This means that companies can require drivers to be behind the wheel 84 hours in seven days. This does not mean full public consultation, however.

To return to the main difficulty in Bill S-3, nothing in it requires or even encourages the federal minister to assert authority over safety of extra-provincial trucking when provinces continue to be recalcitrant about implementing the standards.

This is a serious matter, honourable senators. In 1993, the National Transportation Act Review Commission issued two strong recommendations. It urged the minister to appoint a senior representative to chair a working group to resolve the inconsistencies of regulation expeditiously. It also urged the minister to deal with jurisdictions not in compliance by March 31, 1994, by withdrawing the delegation of federal authority to administer extra-provincial trucking and/or to withhold federal contributions to highway infrastructure.

In June of that year, the Commons committee concurred. It reported that prior assurances that the code would be uniformly and fairly administered across the country had not been fulfilled. It also urged the federal government to take unilateral action.

The Canadian Trucking Alliance told our committee that Bill S-3 is premature until there is greater consistency across the country. It urged delaying the coming into force of the bill until there is more evidence of consistency.

I should like to make another suggestion, honourable senators. I am proposing an amendment that is essentially a compromise between exerting federal authority everywhere and doing nothing in those provinces that simply have not acted after 14 years. It would authorize the minister to act on a province-by-province basis wherever a provincial regulation is not in place or a provincial regulation is not equivalent to the National Safety Code standard.

As I said, this is a serious matter. Every year more than 500 Canadians lose their lives in accidents involving large trucks. Fourteen years is long enough to wait for the provinces to honour their pledges to highway safety.

#### MOTION IN AMENDMENT

**Hon. Mira Spivak:** Therefore, honourable senators, I should like to propose an amendment. I move, seconded by the Honourable Senator Forrestall:

That Bill S-3 be not now read a third time but that it be amended in clause 6, on page 6,

(a) by replacing line 27 with the following:

"er undertakings"; and

(b) by replacing line 32 with the following:

"ings; and



(j) implementing, with respect to extra-provincial motor carrier undertakings, the standards set out in the National Safety Code for Motor Carriers, in every province where there are no provincial regulations implementing those standards or where there are no provincial regulations considered to be equivalent to regulations implementing those standards.”.

• (1440)

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion in amendment?

[Translation]

**Hon. Lise Bacon:** Honourable senators, I think the absence of Senator Spivak yesterday meant she missed my remarks on the amendment she had proposed at the meetings of the Standing Senate Committee on Transport and Communications. I understand that the amendment she has just tabled differs from the one she tabled in committee.

I do not have a copy of the new amendment, but I should just like to alert Senator Spivak and point out that the federal and provincial ministers of transport have formed a bond. As I said yesterday, the provinces have already agreed on implementing a national safety code provincially. They are aware of the merits of doing so.

When Senator Spivak introduced her amendment in committee, we had discussed the fact that the introduction of an amendment might be seen by the provincial ministers as federal government meddling in their affairs.

I refer Senator Spivak to the Council of Ministers for Transport, which meets regularly. I would point out once again the sensitivity of the provincial ministers to meddling by the federal government in provincial jurisdictions.

[English]

**Senator Spivak:** Honourable senators, I am sorry but I did indeed send a copy of the amendment to the office of the Honourable Senator Bacon. I regret that she did not see it because I knew that it would be difficult to look at it today.

I understand the position of the honourable senator. I should like to point out that it is the federal government that has delegated to the provinces. This amendment is merely saying that where there are no provincial regulations, or where there are no equivalent regulations, the federal government would implement those regulations.

The review that was done suggested that process. The recommendations were much stronger than that. It impressed me

strongly, as well as every one else, that the provinces have had 14 years to put in place this National Safety Code. Since the National Safety Code is not in place, even the Canadian Trucking Alliance, the industry association, has said that it is premature to proceed. The trucking alliance and the people of Canada would like to see this national code in place.

If this amendment is not acceptable, and I understand the point of view of the honourable senator, I hope that there is some other method whereby the federal government can ensure that the provinces live up to their promises. They all signed the code, and said they would implement it. It was supposed to be implemented by 1990. Here it is 2001, and it is not yet implemented.

**Senator Bacon:** Honourable senators, I want to tell Senator Spivak that our suggestion in the third report of the Standing Senate Committee on Transport and Communications is that the minister should be told to be vigilant on Bill S-3 and its application.

I stress again the importance of the council of ministers and the sensitivity of the provincial ministers. I do not think that we should interfere and perhaps complicate the life of our federal minister.

**The Hon. the Speaker *pro tempore*:** Is the house ready for the question on the amendment?

**Hon. Senators:** Agreed.

**The Hon. the Speaker *pro tempore*:** Would those honourable senators in favour of the motion in amendment please say “yea”?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker *pro tempore*:** Would those honourable senators opposed to the motion please say “nay”?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker *pro tempore*:** In my opinion, the “nays” have it.

Motion negatived on division.

**The Hon. the Speaker *pro tempore*:** Is the house ready for the question on the main motion?

**Hon. Senators:** Agreed.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read third time and passed.

## RECOGNITION AND COMMEMORATION OF ARMENIAN GENOCIDE

MOTION—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Maheu, seconded by the Honourable Senator Setlakwe:

That this House:

(a) Calls upon the Government of Canada to recognize the genocide of the Armenians and to condemn any attempt to deny or distort a historical truth as being anything less than genocide, a crime against humanity;

(b) Designates April 24th of every year hereafter throughout Canada as a day of remembrance of the 1.5 million Armenians who fell victim to the first genocide of the twentieth century.—(*Honourable Senator Bacon*).

**Hon. Consiglio Di Nino:** Honourable senators, this particular item is in the name of the Honourable Senator Bacon. I hope that she will allow me to speak. She could then take the adjournment, if she so wishes.

I rise today to participate in the debate of Senator Maheu's motion. The senator, along with our colleagues Senator Setlakwe and Senator Wilson, have been spirited in their support of this motion. Today, I will restrict my comments to the first part of Senator Maheu's motion. I should add that I do not believe, as the honourable senator proposes in the second part of the motion, that the Senate has the authority to designate a particular day of remembrance for anyone or any group. Senator Maheu's motion would perhaps be better served by removing the second part by way of an amendment. In that way, it would not take away from the main purpose of her motion.

Honourable senators, Senator Maheu's motion asks us to consider condemning acts of barbarism and atrocities of unspeakable magnitude committed against Armenians many decades ago.

• (1450)

What happened during those dark days has been the subject of opposing and strongly held views since the events first occurred. However, one unaltered fact remains — uncountable numbers of men, women and children were killed during the period in question.

Honourable senators, the conflict between the Turks and the Armenians, which resulted in so many deaths, was yet another of the many manifestations of man's bestial tendencies toward his

own race. The human animal, it seems to me, is the only one capable of seeing its own kind as vermin to be exterminated — the only inhabitant of the animal kingdom that is capable of killing for sport, killing for trophies and killing for revenge.

This atrocious behaviour is nothing new. It has been happening since the dawn of time and continues today in many parts of the world. Honourable senators, some of us were reminded of this today at the prayer breakfast, when General Dallaire pointed out this great failing that we have, as human beings. A cynic would say that it is part of our makeup as human beings, particularly when madness invades our hearts — a condition from which none of us is totally immune.

Honourable senators, to be more precise, Senator Maheu's motion asks us to recommend to the Government of Canada that it recognize that the Armenians were victims of genocide. "Genocide," as all honourable senators are aware, is one of the strongest words in the English language. It conjures up unspeakable images of ovens, trenches, killing fields and mass graveyards. Whether we agree with Senator Maheu's motion, it behooves us to take it seriously.

Honourable senators, support for the Armenian cause has been widespread. Recently, Pope Paul expressed a favourable opinion. I understand that many Turks, including some eminent scholars, have also taken up the cause. They are urging their government to acknowledge the events and apologize to the Armenians for the atrocities committed against them. Some are even demanding that a full and open public inquiry be held. These people have been joined by a group of Turks in Germany, said to number in the thousands, who have also condemned the Turkish government for its refusal to acknowledge the behaviour of its predecessors.

Honourable senators, I will say a word or two about this issue from the Turkish point of view. In a nutshell, the Turks placed the event in the larger context of a crumbling empire under siege. For 700 years, the Ottoman Empire ruled over significant parts of Europe, North Africa and the Middle East. At the time in question, the Ottoman Empire was besieged and contested by both enemies from without and nationalist independence movements from within. Within this context, the Armenian community, or parts of it at least, took up arms against the Ottoman Empire to further its particular cause. The Turkish response to this led to the events that we are discussing today.

Honourable senators, if history has taught us nothing, it is that no race, nationality or creed has an exclusive hold on evil. None of our ancestors are blameless or free of the blemish of guilt. Indeed, I wonder if we will ever eradicate that pernicious trait that is the desire to do ill to our fellow humans.

Honourable senators, perhaps our saving grace will be the fact that as humans, we at least have the ability to reason, to feel pain and pleasure, and to recognize the value of a sincere expression of regret. We are able to express sorrow and forgiveness.



Unfortunately, sorrow and forgiveness in the case of the Armenians and the Turks appear to be in very short supply. I find it difficult to accept the stubbornness of governments to apologize for wrongs committed by them or their predecessors. Such intractability seems nonsensical and an obstacle to social harmony. Such harmony is one of the highest goals of any national government.

A wonderful recent exception to this apparent rule occurred in South Africa, where, under the leadership of Nelson Mandela and Archbishop Desmond Tutu, they created the Truth and Reconciliation Commission. Honourable senators, this commission made brave and commendable efforts to foster forgiveness. In so doing, it made the transition between apartheid and real democracy less painful than might otherwise have been the case.

I wonder, honourable senators, if the Senate could not play a more useful role by recommending a similar process to the Turks and the Armenians to help them resolve their differences.

There was an article on the weekend in *The Globe and Mail* that contained one particular quote that I would like to read to you dealing with forgiveness. Forgiveness, Tutu said:

...requires opening up wounds that you thought had been closed. When you nurse a grudge, you're allowing yourself to continue in victimhood. When you get to a point when you're able to forgive — even if the other person maybe doesn't want or doesn't ask to be forgiven — you have moved out of the situation of being a victim, you're no longer held to ransom by that person.

Unquestionably, the Armenians suffered at the hands of the Ottoman Empire. Undeniably, many hundreds of thousands or more were murdered or forced to emigrate. These things happen. Nothing we can say or do now will alter that fact.

Honourable senators, where do we go from here? Perhaps the best message that we can send to the Turks is that the actions of those days deserve some formal recognition and some expression of contrition. To the Armenians we might say equally that perhaps, as Archbishop Tutu forgave, it is time for them to forgive and to look to the future. That is my personal opinion.

It is in this spirit, honourable senators, that I support Senator Maheu's motion. I am cognizant that this motion is largely symbolic and of limited value. However, the point that needs to be made is that it is not the Government of Canada or, indeed, any other government, but rather it is the Turks and the Armenians alone, who can truly bring closure to this matter. For this, I wish them Godspeed.

**Some Hon. Senators:** Hear, hear!

On motion of Senator Bacon, debate adjourned.

[ Senator Di Nino ]

## THE NATIONAL ANTHEM

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Poy calling the attention of the Senate to the national anthem.—(*Honourable Senator Pépin*).

**Hon. Thelma J. Chalifoux:** Honourable senators, it gives me great pleasure to address you regarding this most interesting issue of gender neutrality in our national anthem. If we go back into the history and the times when our anthem was written, women were not even recognized as persons. We had no voice and we had no vote; yet women had the roles of working the land alongside their husbands; hunting and gathering of food so that the family could survive; and bearing and raising the children, while the men were away at wars or working.

Honourable senators, throughout the history of our anthem, certain words have been changed. In my opinion, it is now time to consider that our anthem should be gender neutral. *O Canada!* was proclaimed the national anthem on July 1, 1980, 100 years after it was first sung on July 4, 1880. The music was composed by Calixa Lavallée, a well-known composer. The French lyrics were written by Sir Adolphe-Basile Routhier. Many English versions have appeared over the years. The official English lyrics were written in 1908 by Mr. Justice Robert Stanley Weir. This version includes changes recommended by a special joint committee of the Senate and the House of Commons in 1968. On June 14, 1984, Mr. Howard Crosby submitted a private member's bill to amend the anthem to make it gender neutral. Then, on June 21, 1994, another private member's bill was submitted on the very same amendment to the national anthem.

In my opinion, it is long past due that our national anthem recognize all Canadians. Therefore, I support the purpose of Senator Poy's motion to amend our national anthem and have it reflect the pride of all Canadians and suggest that, if amended, it be gender neutral.

On motion of Senator Pearson, debate adjourned.

## HISTORICAL IMPORTANCE OF PROCLAIMING FEBRUARY BLACK HISTORY MONTH

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Oliver calling the attention of the Senate to the historical importance to Canadians of February being proclaimed Black History Month.—(*Honourable Senator Cools*).

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I should like to make a few comments on this inquiry. I believe that the Honourable Senator Oliver has done a service to Canadian society by calling the attention of the Senate to Black history, and in particular Black History Month.



In the preface to W.A. Spray's book *The Blacks in New Brunswick*, Joseph Drummond wrote:

Down through the ages the educational institutions of the Western World have been intentionally remiss in not teaching Black People about their culture and their historical traditions.

On page nine of the same book, Joe Drummond is further quoted as holding that:

White people have been in complete ignorance of the contributions of their fellow Black citizens and of their strivings and heartbreaks and soul-searching frustrations...

I believe that research into Black history in Canada will demonstrate how wrong H.H. Potter was when, in the foreword to a report presented to the Royal Commission on Bilingualism and Biculturalism entitled "Negro Settlements in Canada, 1628-1965: A Survey," it was written:

Except for Negro settlements in southwestern Ontario and in parts of Nova Scotia, no historical continuity worth mentioning lies waiting to be discovered.

Honourable senators, that view is dead wrong and Senator Oliver's inquiry is, therefore, so very important to help us combat such ignorance.

At a later time, I should like to speak to the rich history of the Black community of my province of New Brunswick, a history that is long, exciting and multivariate. It is the story of remarkable men and women who trace their ancestors to many parts of the world, and much before the American revolutionary war. They lived in New Brunswick before our province was even established as a province in 1784.

Honourable senators, it is interesting to find that the first record of a Black man living in New Brunswick is recorded in W.O. Raymond's book *History of the River Saint John 1684-1784*. Reference is made to a man, a native of Marblehead, Massachusetts, who was carried to the Saint John River by the French forces who captured him during a raid down into New England. That Black man was freed in 1696. Therefore, the history of the Black community in the province of New Brunswick is a long one, and one on which I should like to speak further.

Therefore, I move the adjournment of the debate.

On motion of Senator Kinsella, debate adjourned.

## ISSUES IN RURAL CANADA

INQUIRY—DEBATE ADJOURNED

**Hon. A. Raynell Andreychuk** rose pursuant to notice of February 22, 2001:

That she will call the attention of the Senate to issues surrounding rural Canada.

She said: Honourable senators, I have put the issue of rural Canada on the agenda as it is an emerging issue with which the Senate and the Government of Canada must deal.

I was born on a farm and I spent many of my summer holidays in rural Canada and celebrated many events there. I see disturbing changes taking place in rural Canada that are not being addressed in a manner appropriate for Canadians.

I move the adjournment of the debate today in order that I can speak to this matter at length at the next sitting.

On motion of Senator Andreychuk, debate adjourned.

[Translation]

## SITUATION OF OFFICIAL LANGUAGES IN ONTARIO

INQUIRY—DEBATE ADJOURNED

**Hon. Jean-Robert Gauthier** rose pursuant to notice of Tuesday, May 8, 2001:

That he will call the attention of the Senate to current issues involving official languages in Ontario.

He said: Honourable senators, the intent of this inquiry is to remind you of the difficulties francophones in Ontario experience in obtaining services in French. Last week, I spoke of the area of education. Today, I should like to talk to you about health care, where serious problems are occurring in Ontario.

Montfort Hospital is a current matter. It is the only French-language teaching hospital in Ontario. The Government of Ontario had asked a provincial commission to restructure hospitals, but this commission decided to close the Montfort. To have only one French-language teaching hospital at the university level in Ontario was to me unusual, even unacceptable.

• (1510)

Some people undertook negotiations to keep Montfort Hospital. Not because they wanted something extraordinary and not because Montfort Hospital was not a good hospital. On the contrary, it was one of Ontario's best hospitals. It even won first prize two or three times.

The only reason given was that the restructuring commission felt that Montfort Hospital was not necessary to meet the region's needs. A campaign organized largely by volunteers was launched. I was asked to chair the fundraising campaign, so that we could hire lawyers to go before the courts. We francophones launched legal proceedings to fight this decision by the commission. After hearing the lawyers, the Ontario Divisional Court sided with us. It ruled that the hospital must continue to serve the population of Ottawa and Eastern Ontario. Of course, the provincial government was not pleased with this ruling and, a few weeks later, it appealed to the Ontario Court of Appeal.

We were forced once again to organize and to motivate our troops after a rather tough and costly campaign. We continued to defend before the courts our right, in Ontario, to have access not only to health care services in French, but also to a training hospital for our francophone doctors.

The issue is now before the court. It will be heard around May 15. I felt it would be a good idea to have the federal government, the Commissioner of Official Languages and others go before the courts to defend our point of view. In August of last year, I personally wrote to the Prime Minister and to Mrs. MacLellan, the Minister of Justice, and asked them to take a stand regarding this appeal. I was told: "Maybe, we will see. We do not know. It is not customary for the federal government to get involved in provincial issues. We always wait until the matter is heard by the Supreme Court."

Given the circumstances and the importance of this issue, the government asked to be heard and the case will — if I can put it this way — be argued before the courts by organizations such as the federal government, the Commissioner of Official Languages, Ontario's Association des communautés francophones and many others.

Each of the *factums* presented must be different. The federal government is drawing on Bill 8, which in Ontario permits certain services in the fields of health care, social services and certain government services in the regions to be delivered in French. This is an Ontario bill, not a federal one. The federal government intends to use this bill, because it is a quasi constitutional bill. It is key legislation that concerns a very important matter, one of the official languages of the country, French, in Ontario.

I have been criticized. We have been told we should not get involved in these matters. This has appeared in certain articles signed by Norman Spector. I will quote it because it is not nice to say such things. I do not understand that it is permitted.

The article appeared May 8.

[English]

Ottawa River marks the line for two sets of language policies.

The article says, in part:

So, here's the poop: Official Languages Commissioner Dyane Adam has asked the Supreme Court to block closure of the French-language Montfort Hospital. Francophone groups, financed by the federal government, are asking the same. The Ontario government, which says there is no right to minority language hospitals in the Canadian Constitution, says that the courts should not invent one.

[Translation]

I will stop there, because what follows will really upset you.

[ Senator Gauthier ]

There are a lot of such comments. We need to understand each other, to listen to each other, to see one another and to talk to one another in both official languages. I do not know Mr. Spector, but the article is signed:

[English]

Norman Spector served as Secretary to the Cabinet for Federal-Provincial Relations from 1986-1990.

[Translation]

I am going to read you the article. I skipped over one paragraph because it involved me. He attacks Montfort Hospital as an exception, as unwelcome if it is not in the Constitution of Canada. Obviously it is not in the Constitution because health is a provincial jurisdiction. However, there is a Franco-Ontarian community in Ontario. There are anglophones in Quebec and they have the right to receive services in their mother tongue in Quebec. We in Ontario have a hospital and people want to take it away from us. This is not right. We should have access to services in French in Ontario. We have this service now. Why take it away from us? Is there any reason? Is it a matter of money? No! Ontario is one of the richest province in Canada. Is it a matter of inefficiency? No! The hospital is very efficient. Why is it being taken away? Because Mr. Spector says there is no requirement for it under the Constitution. There are provincial laws which we must comply with and which must be taken into consideration.

The federal government is going to intervene in the Montfort Hospital case and I hope that we will win on appeal. If we lose, we will take the case to the Federal Court and the Supreme Court of Canada! I believe in this cause and so do Ontario's francophones. People are writing to the newspapers. On March 5, 2001, Bob Philips wrote a lengthy article in the *Ottawa Citizen*, in which he said:

[English]

Montfort lobby hurts bilingualism by its cosy bonds with separatists.

[Translation]

• (1520)

That interested me. I am no separatist! I will read you something written by Bob Philips on March 2, 2001.

[English]

Quebec's linguistic minority has not a single English-language hospital, nor would it press for such a costly boondoggle.

This is ridiculous. It is not true.



[Translation]

I have the complete list of Quebec's English-language hospitals. There are 17 of them. There is a university health centre where both English and French are used. Montfort Hospital is not a unilingual French hospital; it is a hospital where French is the working language, no more and no less than at the Royal Victoria Hospital, the Montreal Neurological Institute, the Montreal Chest Institute, the Montreal General Hospital or the Montreal Children's Hospital. We are not asking for more or less in terms of health services than what Montfort Hospital is currently providing. It is not that complicated.

I hope that this issue will be settled. Yesterday, the issue of bilingualism in Ottawa was settled, and the case of Montfort Hospital will also be settled. If things keep going like this, I will no longer have anything to say in this chamber.

I would now like to discuss the Contraventions Act passed by Parliament in 1997. That act allowed the federal government to reach agreements with the provinces to allow them to apply the Dominion Lands Act on federal lands, such as at Toronto's Lester B. Pearson airport and Ottawa's Macdonald-Cartier airport. These airports use English as the language of communication. That is fine, except that by transferring to the provinces the responsibility of implementing the Dominion Lands Act, the federal government was required to comply with the Official Languages Act and issue contraventions in both official languages.

The Association des juristes d'expression française de l'Ontario filed a complaint with the Commissioner of Official Languages, who was Mr. Goldbloom at the time. The commissioner sided with the association and the case was heard by the courts.

**The Hon. the Speaker *pro tempore*:** I am sorry to interrupt you, Senator Gauthier, but your time is up. Are you asking for leave to continue?

**Senator Gauthier:** Yes.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Gauthier:** Application of the law was dismissed by Justice Blais. He found that the francophones and the commissioner were right and that the Official Languages Act had been contravened. The federal government would have to correct its error. In his decision, the judge gave the federal government a year to do so, to ensure that the Toronto and Ottawa airports gave out tickets in both official languages. It is not a big deal; that is all we wanted!

**Hon. Joan Fraser:** With leave of honourable senators, I should like to make a brief comment on Senator Gauthier's speech.

Honourable senators, I wholeheartedly support Senator Gauthier's project on Montfort Hospital. It must be kept open and it must remain the centre for Ontario francophones that it has always been.

I would just point out that Quebec, according to the law, has no English hospitals. Not any longer. According to Quebec law, all hospitals now operate within a regime where the language of work must be French but some have the right to provide services in another language, generally English.

Hospitals can lose their bilingual status, and this has caused problems for certain anglophone communities in Quebec. This is regrettable, just as the actions of the Harris government with respect to Montfort are regrettable.

**Hon. Marcel Prud'homme:** Honourable senators, I will speak to this when the time is right, but I do not subscribe to Senator Fraser's comparison. It is not part of the same debate. I will explain carefully in a future debate why I do not agree with what Senator Fraser has said.

**The Hon. the Speaker *pro tempore*:** Do you wish to move adjournment of the debate, Senator Prud'homme?

**Hon. Eymard G. Corbin:** Honourable senators, I move that the debate be adjourned.

On motion of Senator Corbin, debate adjourned.

[English]

## FOOD AND DRUGS ACT

BILL TO AMEND—MOTION FOR WITHDRAWAL FROM SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE AND REFERRAL TO ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES COMMITTEE ADOPTED

**Hon. Jeremiah S. Grafstein,** pursuant to notice of May 8, 2001, moved:

That Bill S-18, An Act to Amend the Food and Drugs Act (clean drinking water), which was referred to the Standing Senate Committee on Social Affairs, Science and Technology, be withdrawn from the said Committee and referred to the Standing Senate Committee on Energy, the Environment and Natural Resources.

**Hon. Eymard G. Corbin:** Explain!

**Senator Grafstein:** Honourable senators, I shall be brief. When we were debating this bill, I spoke to Senator Kirby, Chairman of the Standing Senate Committee on Social Affairs, Science and Technology, who advised me that his committee would undertake the study of this bill. Concurrent with second reading, which was unanimous, I was advised by him in writing that his committee could not get to the study of the bill until later this fall.



In the interim, Senator Taylor indicated that his committee had a clear agenda and as such would undertake to conduct the study as soon as possible, once government business was out of the way. There was agreement that he would undertake it on behalf of his committee, hence the rationale for this wonderful motion.

**Hon. Nicholas W. Taylor:** Honourable senators, I have a short comment to make. When I agreed to put the bill before the committee, I thought I had an agreement that the honourable senator would not speak to it any more.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

• (1530)

## HUMAN RIGHTS

### COMMITTEE AUTHORIZED TO STUDY ISSUES RELATED TO HUMAN RIGHTS

**Hon. A. Raynell Andreychuk,** pursuant to notice of May 8, 2001, moved:

That the Standing Senate Committee on Human Rights be authorized to examine issues relating to human rights, and, *inter alia*, to review the machinery of government dealing with Canada's international and national human rights obligations; and

That the Committee report to the Senate no later than Wednesday, October 31, 2001.

Motion agreed to.

[Translation]

## ADJOURNMENT

Leave having been given to revert to government Notices of Motions:

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Tuesday next, May 15, 2001, at 2:00 p.m.

**The Hon. the Speaker *pro tempore*:** Is leave granted honourable senators?

**Hon. Senators:** Agreed.

Motion adopted.

The Senate adjourned during pleasure.

• (1600)

## ROYAL ASSENT

The Honourable Ian Binnie, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General having come and being seated at the foot of the Throne, and the House of Commons having been summoned, and being come with their Acting Speaker, the Honourable the Deputy Governor General was pleased to give the Royal Assent to the following bills:

An Act to amend the Blue Water Bridge Authority Act (*Bill S-5, Chapter 03, 2001*)

A first Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law (*Bill S-4, Chapter 04, 2001*)

An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations (*Bill C-2, Chapter 05, 2001*)

An Act respecting marine liability, and to validate certain by-laws and regulations (*Bill S-2, Chapter 06, 2001*).

The House of Commons withdrew.

The Honourable the Deputy Governor General was pleased to retire.

The sitting of the Senate was resumed.

The Senate adjourned until Tuesday, May 15, 2001, at 2:00 p.m.

**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
 (1st Session, 37th Parliament)  
 Thursday, May 10, 2001

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-2	An Act respecting marine liability, and to validate certain by-laws and regulations	01/01/31	01/01/31	—	—	—	01/01/31	01/05/10	6/01
S-3	An Act to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts	01/01/31	01/02/07	Transport and Communications	01/05/03 amended 01/05/09	3	01/05/10		
S-4	A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	01/01/31	01/02/07	Legal and Constitutional Affairs	01/03/29	0 + 1 at 3rd	01/04/26	01/05/10	4/01
S-5	An Act to amend the Blue Water Bridge Authority Act	01/01/31	01/02/07	Transport and Communications	01/03/01	0	01/03/12	01/05/10	3/01
S-11	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts	01/02/06	01/02/21	Banking, Trade and Commerce	01/04/05	17 + 1 at 3rd	01/05/02		
S-16	An Act to amend the Proceeds of Crime (Money Laundering) Act	01/02/20	01/03/01	Banking, Trade and Commerce	01/03/22	0	01/04/04		
S-17	An Act to amend the Patent Act	01/02/20	01/03/12	Banking, Trade and Commerce	01/04/05	0	01/05/01		
S-23	An Act to amend the Customs Act and to make related amendments to other Acts	01/03/22	01/05/03	National Finance					
S-24	An Act to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence	01/03/27	01/04/05	Aboriginal Peoples	01/05/10	0			

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-2	An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations	01/04/05	01/04/24	Social Affairs, Science and Technology	01/05/03	0	01/05/09	01/05/10	5/01
C-3	An Act to amend the Eldorado Nuclear Limited Reorganization and Divestiture Act and the Petro-Canada Public Participation Act	01/05/02	01/05/10	Energy, the Environment and Natural Resources					

C-4	An Act to establish a foundation to sustainable development technology	01/04/24	01/05/02	Energy, the Environment and Natural Resources					
C-8	An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions	01/04/03	01/04/25	Banking, Trade and Commerce					
C-9	An Act to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act	01/05/02	01/05/09	Legal and Constitutional Affairs					
C-12	An Act to amend the Judges Act and to amend another Act in consequence	01/04/24	01/05/09	Legal and Constitutional Affairs					
C-13	An Act to amend the Excise Tax Act	01/04/24	01/05/01	Banking, Trade and Commerce					
C-18	An Act to amend the Federal-Provincial Fiscal Arrangements Act	01/05/09							
C-20	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	1/01
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	2/01

## COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
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## SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	01/01/31	01/01/31	National Finance	01/03/28	5			
S-7	An Act to amend the Broadcasting Act (Sen. Finestone, P.C.)	01/01/31	01/02/07	Transport and Communications					
S-8	An Act to maintain the principles relating to the role of the Senate as established by the Constitution of Canada (Sen. Joyal, P.C.)	01/01/31	01/05/09	Privileges, Standing Rules and Orders					
S-9	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	01/01/31							
S-10	An Act to amend the Parliament of Canada Act (Parliamentary Post Laureate) (Sen. Grafstein)	01/01/31	01/02/08	—	—	—	01/02/08		
S-12	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	01/02/07	01/03/27	Social Affairs, Science and Technology					



S-13	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	01/02/07	01/05/02	Privileges, Standing Rules and Orders				
S-14	An Act respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day (Sen. Lynch-Staunton)	01/02/07	01/02/20	Social Affairs, Science and Technology	01/04/26	0	01/05/01	
S-15	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	01/02/07	01/03/01	Energy, the Environment and Natural Resources	01/05/10	0		
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CANADA

# Debates of the Senate

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OFFICIAL REPORT  
(HANSARD)

Tuesday, May 15, 2001

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THE HONOURABLE DAN HAYS  
SPEAKER



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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Tuesday, May 15, 2001

The Senate met at 2 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### PRINCE EDWARD ISLAND

CONGRATULATIONS ON APPOINTMENT OF HIS HONOUR  
LIEUTENANT-GOVERNOR LÉONCE BERNARD

**Hon. Elizabeth Hubley:** "He is a man of the people. She is a woman of the people." These words have been used so many times to describe people whose lives are intimately connected with their communities, individuals who have aspired to leadership and put community service before personal gain or ambition, fellow citizens who distinguish themselves by giving rather than taking.

Honourable senators, according to this definition, Prince Edward Island's newly appointed Lieutenant-Governor, Léonce Bernard, is truly a man of the people, and as such I believe that he will carry out his viceregal duties and responsibilities with great spirit and dignity. He is a great Islander.

In his home village of Wellington, and throughout the Évangeline region of Prince County, there are few organizations or service groups that Léonce has not been actively involved with over the years. Indeed, to the Acadian people of Prince Edward Island in particular, Léonce Bernard has been an inspired and tireless worker, an example to others, and a loved and respected political representative.

His education and professional background is in business and accountancy. Following several years of service with the Royal Canadian Air Force, he became manager of the local Évangeline Credit Union in 1970. Looking for a bigger stage on which to promote his cooperative philosophy and ideas for community economic development, Mr. Bernard contested and won a seat in the provincial legislature in 1975. He was re-elected five times as the MLA for 3rd Prince and served in the administration of the late Premier Joseph A. Ghiz, first as Minister of Industry and Chairman of the P.E.I. Development Agency, and then as Minister of Fisheries and Aquaculture and Minister of Community and Cultural Affairs.

Honourable senators, Léonce Bernard returned to his home community after retiring from provincial politics in 1993 and once again took up the challenge of community development, managing the Credit Union for a second time, then helping to establish La Coopérative Le Village Acadien Ltée, a unique and successful venture in cultural tourism.

Mr. Bernard's work as a community developer and "cooperator" is known and respected both in Prince Edward Island and across Canada. He has served as President of the Council of Cooperatives of Prince Edward Island, member of the National Council of Cooperatives, and member of the advisory committee to the federal minister responsible for cooperatives. He is a man of honour and humility, a man who believes passionately in Canada, a man who enthusiastically embraces its living ideals of justice and equality, and a man who encourages and inspires others to act for the betterment of their communities.

Honourable senators, Léonce Bernard will be sworn in as Prince Edward Island's Lieutenant-Governor on May 28, succeeding the Honourable Gilbert R. Clements. I have no doubt whatsoever that Mr. Bernard will distinguish himself in his new role. I know that all senators will join me in conveying to him and to his wife, Florence, and their children best wishes as they prepare to make Government House their new home.

#### THE LEAHY

##### TRIBUTE

**Hon. Norman K. Atkins:** Honourable senators, I wonder how many members of the Senate have had the opportunity of hearing a musical group called "Leahy." They played here in Ottawa at the opening of Tulip Festival last Friday night to a wildly enthusiastic audience.

The remarkable thing about this group is that they are all members of one farming family from Lakefield, Ontario. They have deep and rich Celtic roots. Their mother is a Cape Bretoner and their father is from sixth generation Irish descent. Their original homestead is in Peterborough County, where the parents still live. There are 11 children, nine of whom are currently performing together, five women and four men, who range in age from 22 to 35. They all have incredible talents, which they use interchangeably. They all play several instruments, ranging from fiddle to piano, guitar and saxophone. They all sing and they all step dance.

Honourable senators, the members of Leahy are part of the rebirth of the traditional Celtic music movement. The music they play demonstrates the incredible talent each member of the family possesses. Collectively, they put on a spectacular performance. They write a lot of their own material and they have produced several albums, the next to be released this summer.

While there are a number of talented groups in Canada playing Celtic music, I believe Leahy deserves special mention as a remarkable Canadian family, sharing their talents with all of us.

[Translation]

## ANNUAL REPORT OF CANADIAN INSTITUTE FOR HEALTH INFORMATION

**Hon. Yves Morin:** Honourable senators, last week the Canadian Institute for Health Information produced its annual report on the health of Canadians and the health system.

This institute brings together the ministers of health of the provinces, with the exception of Quebec, of the territories and of the federal government and is doing a remarkable job that serves as a model in this field for all other countries.

Honourable senators, I must express regret at the inexplicable absence of Quebec from this institute, an absence that is extremely harmful for the health of Quebecers.

[English]

• (1410)

There is also, honourable senators, good news in this report. For example, life expectancy has again increased in Canada to 79 years, and we are now second in the world, right behind Japan. As a matter of fact, if the health status of our First Nations were similar to that of other Canadians, we would be by far the healthiest country in the world.

Finally, health care costs increased last year by 7 per cent to \$95 billion. This increase is a very serious issue that the Standing Senate Committee on Social Affairs, Science and Technology intends to address in the coming months.

## ALBERTA

### LETHBRIDGE—THE LATE JESSICA KOOPMANS

**Hon. Joyce Fairbairn:** Honourable senators, I am sure that all of you will share the grief of the family of Jessica Koopmans at the loss of their beautiful child who went missing over a week ago in my home town of Lethbridge, Alberta. This is an overwhelming tragedy in every sense of the word which has touched the hearts of families and communities large and small all across this country.

Jessica was a beautiful, happy little girl, just five years old, much loved by her mother, Sylvia, her father, Darren, and her sister, Sierra, who is seven. I know her grandparents, Tony and Marie Bouw, who adore these two children.

Honourable senators, Lethbridge is a lovely small city in the southwest corner of Alberta, a friendly, peaceful place where the well-being of families is top priority. Jessica trotted off to play with a friend just a short way down her street on May 4 and completely disappeared until the body of a youngster was found in a field not far from Lethbridge, last Friday morning. The

identity of that body was officially confirmed today, and the family and the entire community is in mourning for Jessica.

Honourable senators, this is the ultimate nightmare of a parent, any relative who has had the joy and privilege of sharing a child. The outpouring of support from every part of the community and through the Internet from all around this country has been extraordinary.

The Lethbridge City Police and their colleagues from Calgary, Edmonton and the Royal Canadian Mounted Police went beyond every possible effort to find Jessica. We expect that strength from our police forces, but sometimes we forget that they, too, have families and feel the same grief and pain as the rest of us in such situations. Now they will focus their strength on finding whoever is responsible for this crime.

Honourable senators, the departure of any child is a tragedy, but to have to say farewell this way is unthinkable and unspeakable. For now, I am sure you will join me in offering our sympathy and prayers to Jessica's family as they focus their memories on the happiness and laughter and love she brought to their lives.

[Translation]

## ROUTINE PROCEEDINGS

### ADJOURNMENT

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, May 15, 2001, at 1:30 p.m.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

Motion agreed to.

[English]

## CANADA SHIPPING BILL, 2001

### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-1 respecting shipping and navigation and to amend the Shipping Conferences Exemption Act, 1987 and other Acts.

Bill read first time.



**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

[Translation]

## TOBACCO TAX AMENDMENT BILL, 2001

### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-26, to amend the Customs Act, the Excise Tax Act, the Customs Tariff Act and the Income Tax Act in respect of tobacco.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the day for second reading two days hence.

[English]

## INCOME TAX AMENDMENTS BILL, 2001

### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-22, to amend the Income Tax Act, the Income Tax Application Rules, certain Acts related to the Income Tax Act, the Canada Pension Plan, the Customs Act, the Excise Tax Act, the Modernization of Benefits and Obligations Act and another Act related to the Excise Tax Act.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

[Translation]

## BUDGET IMPLEMENTATION ACT, 1997 FINANCIAL ADMINISTRATION ACT

### BILL TO AMEND—FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-17, to amend the Budget Implementation Act, 1997 and the Financial Administration Act.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the day for second reading two days hence.

[English]

• (1420)

## ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

### COMMITTEE AUTHORIZED TO SIT DURING SITTING OF THE SENATE

**Hon. Nicholas W. Taylor:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Energy, the Environment and Natural Resources have power to sit at 4:30 p.m. today, Tuesday, May 15, 2001, for the purpose of hearing the Minister of Natural Resources on its study of Bill C-4, to establish a foundation to fund sustainable development technology, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, is it there an understanding that the Minister of Natural Resources is available at that time?

**Senator Taylor:** Yes. The Minister of Natural Resources is coming. That was one of the few times that we could arrange a meeting, so the committee is asking for leave to sit a little earlier than normal.

**Senator Kinsella:** Honourable senators, that is the kind of exceptional circumstance for which we grant leave. I think the flexibility of this rule is wise.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

## ASIAN HERITAGE

### NOTICE OF MOTION TO DECLARE MAY AS MONTH OF RECOGNITION

**Hon. Vivienne Poy:** Honourable senators, I give notice that on Tuesday, May 29, 2001, I will move:

That May be recognized as Asian Heritage Month, given the important contributions of Asian Canadians to the settlement, growth and development of Canada, the diversity of the Asian community, and its present significance to this country.



## AGRICULTURE ISSUES

### NOTICE OF INQUIRY

**Hon. Jim Tunney:** Honourable senators, I give notice that on Thursday next, May 17, 2001, I will call the attention of the Senate to Canadian agricultural issues, specifically grain, dairy and hemp.

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, before proceeding to the next item on our Order Paper, I wish to draw the attention of honourable senators to the presence in the gallery of members of the Mohawk Council of Kanesatake led by Grand Chief James Gabriel.

Welcome to the Senate.

**Hon. Senators:** Hear, hear!

## QUESTION PERIOD

### NATIONAL DEFENCE

#### REPLACEMENT OF SEA KING HELICOPTERS— ORDER TO PROCEED WITH PROJECT

**Hon. J. Michael Forrestall:** Honourable senators, I have a question or two for the Leader of the Government in the Senate. Now that things seem to be moving off centre a little bit, the word "soon" might take on an entirely different connotation.

My question relates to the helicopter project. Can the minister confirm that a meeting in fact was held between senior officials and officers within the Department of National Defence and the Maritime Helicopter Project Office yesterday and that, despite problems with the process, the Maritime Helicopter Project Office was issued an order to get on with the Sea King replacement? Can she confirm that? I am sure that would be welcome news in many circles. If so, can the leader give us some indication of just what "get on with the project" means?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as so often happens, the honourable senator has information at his disposal that I do not have at mine. I hope that the meeting took place yesterday. Certainly, I would be enthusiastic if an order to "get on with it" had been issued because I should like to be able to answer all of the honourable senator's questions. Thus far, I have not been batting very well.

**Senator Forrestall:** Honourable senators, the honourable leader is just slightly ahead of the Toronto Blue Jays.

Can the minister confirm that senior officials in the Department of Public Works and Government Services Canada

have now asked for written instructions from the minister as to how to proceed with this controversial Sea King replacement project that makes the Government of Canada the primary contractor?

**Senator Carstairs:** Honourable senators, I cannot confirm whether the Department of Public Works has asked for a written instruction as to who will be the primary contractor. Like my honourable friend, I just hope they get on with it and that we can, as much as possible, meet the deadline of 2005 that has been set by the Department of National Defence.

**Senator Forrestall:** Does the minister have any reason to believe that such an instruction may very well have been issued?

**Senator Carstairs:** Honourable senators, I must say that I have no idea whether such an instruction was issued. I have not been given an update as to the status of the project as of this date.

#### COMMENTS BY PARLIAMENTARY SECRETARY WITH REGARD TO FORMER SENIOR MILITARY OFFICERS

**Hon. Norman K. Atkins:** Honourable senators, my question is directed to the Leader of the Government in the Senate. Yesterday, the Parliamentary Secretary to the Minister of National Defence stated in reference to four of Canada's distinguished soldiers, Generals Dallaire, Belzile, Addy and MacKenzie, that:

... it seems that as soon as one becomes a retired general one receives with the first pension cheque some type of conscience that one did not have when in the CF.

This comes on the very heels of the Liberal Member of Parliament for Scarborough denying help to an 81-year-old blind veteran.

Is it the policy of the Government of Canada to criticize and denigrate former senior military officers with impeccable reputations and international stature if they disagree with government policy?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I am presuming that the honourable senator is reading from yesterday's Hansard in the other place, which would indicate what exactly the Parliamentary Secretary may have said.

It is clear that we have had distinguished generals in Canada. They are distinguished while they are generals and, in my view, they are distinguished after they are generals.

**Senator Atkins:** Honourable senators, could the leader tell me if any steps are being taken by the government now to apologize to these distinguished retired generals for impugning their characters and their right to express freely their views on current government policy?

**Senator Carstairs:** Honourable senators, I have no idea whether apologies are in order or if apologies are being made. I simply would reiterate my earlier words that all of these men have served Canada with great distinction and I think they are deserving of respect now as they were in the past.

**Senator Atkins:** Does the leader not believe that they deserve an apology for the comments that were made in the House of Commons yesterday?

• (1430)

**Senator Carstairs:** Honourable senators, the other place clearly will be asked similar questions, I would presume. It would be more appropriate if those answers came from the Parliamentary Secretary who made the statements or from the Minister of Defence.

## THE SENATE

### POSSIBILITY OF HEARING INFORMATION COMMISSIONER IN COMMITTEE OF THE WHOLE

**Hon. Marcel Prud'homme:** Honourable senators, my question is directed to the Leader of the Government in the Senate. The Senate has twice received and heard Mr. Bruce Phillips, the former Privacy Commissioner, speak in the Senate. That is my recollection.

We have also heard Mr. George Radwanski, the Privacy Commissioner, speak to us in the Senate. I disagreed with Mr. Radwanski then and I certainly continue to disagree with him now. I voted against the ratification of his appointment, but he is the commissioner. I accepted the outcome because we live in a democracy.

However, honourable senators, we have never received in the Senate, to the best of my knowledge, the Information Commissioner. Is it possible that the government may consider inviting him to speak before us? I am not part of any deal between the opposition and the government, but perhaps it would be possible to hear from him on the floor of the Senate.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for his question. Not only have we heard from Mr. Phillips and Mr. Radwanski, but we have also heard from the Commissioner of the Human Rights Commission, just two weeks ago. On each of those three occasions there has been a very positive interaction between the members of this chamber and the appropriate commissioner.

If the honourable senator is asking me to make arrangements to have a Committee of the Whole, at a time in the future, to hear the Information Commissioner in the Senate, and if the request were supported by other members of this place, I would be delighted to do so.

**Senator Prud'homme:** Honourable senators, for my supplementary, I will listen to the answer to the first question, unlike the members in the House of Commons, where they do not listen to the answer to the first question.

Honourable senators, although I am not involved in the deliberations, may I say that if this is ever put to the honourable leader, or if she ever puts it to the opposition, she will not need to consult with me? I will be more than happy to give my full support to hear the commissioner, especially in light of the unfortunate situation developing between two appointees of Parliament. It is detestable to see this exchange of public views between two people who have been appointed by Parliament and who are responsible to Parliament. That behaviour does not enhance the image of any member. It is not unlike having a fight between the Chief Electoral Officer and the Commissioner of Official Languages, who are also officers of Parliament.

Honourable senators, I find it repugnant to hear such an exchange. In all fairness, I wanted it on the record that I do not need to be consulted; I am in my corner if this deliberation were to take place.

Honourable senators, I am pleased by the leader's response because it indicates that she is open to suggestions.

**Senator Carstairs:** Honourable senators, I hope that I am always available. If I see Senator Kinsella rising on the other side, I would think that he is, in fact, standing in support of your request.

I would put only one caveat on the request. Currently, the case that involved an interaction between the two commissioners last weekend is a matter before the courts. Personally, I should like to see the matter settled before we invite the individual to the Senate; or I would prefer the restriction that we not deal with that particular case, should the Information Commissioner appear before us.

**Senator Prud'homme:** Honourable senators, I will only add that Parliament is the ultimate court of appeal. It has had much coverage in the paper lately. There are those who should follow the good example that we set here and not comment on a matter that is pending in court. That advice should have been followed by the commissioner last week when he started to debate the issue publicly.

Now, everyone is joining in, and I find it rather strange that the only people who have not talked about it are those who made the appointments. The ex-commissioner, Mr. Phillips, has joined the debate. They are not limiting or restricting themselves at all to the fact that the matter is pending in court. I believe that the Senate is the right place to restore some sanity to this debate.

Honourable senators, the press will comment for and against, but it will not serve the intentions that we had when we created this new employment.



**Senator Carstairs:** Honourable senators, it is a time-honoured tradition in this place that we not debate and discuss matters that are before the court. We should respect that tradition.

[Translation]

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table in the Senate the delayed answers to three questions: the question raised by Senator LeBreton on May 1, 2001, concerning appointments to the Immigration and Refugee Board of Canada; and questions raised by Senator St. Germain on May 3 and 4, 2001, concerning the United States and lumber exports.

## IMMIGRATION AND REFUGEE BOARD

### APPOINTMENTS

*(Response to question raised by Hon. Marjory LeBreton on May 1, 2001)*

### Ministerial Advisory Committee (MAC)

The Immigration Act stipulates that members of the IRB be appointed by the Governor-in-Council. In March 1995, the then Minister of Citizenship and Immigration established a Ministerial Advisory Committee (MAC) to assist in the selection of Board members. In his report of December 1997, the Auditor General endorsed the establishment of the MAC as it allowed for the selection of qualified candidates. The Committee was given the mandate to assess candidates and to recommend a list of qualified candidates to the Minister. The MAC is comprised of a chairman, six members and the IRB chair, who are appointed by the Minister on a voluntary basis.

### Member Selection Process

A comprehensive process has been put in place by the Ministerial Advisory Committee to ensure that qualified candidates from all walks of life are selected to serve on the Immigration and Refugee Board. The selection process includes the following steps:

- Initial Screening
- Written Test
- Reference Check
- Interview

The Committee uses a competency-based approach to assess candidates. Candidates must demonstrate that they possess the following competencies:

- Analytical reasoning and thinking skills
- Decision making and judgement
- Action management
- Communication skills
- Interpersonal relations
- Professional ethics

Different steps are followed to assess candidates, each competency being assessed more than once.

### Initial Screening

Each candidate is reviewed based on the following criteria: the candidates must have a degree from a recognized university, or equivalent professional qualification and a minimum of five years of professional experience.

### Written Test

Candidates who have been screened in are invited to a written test. The simulation verifies the following competencies: communication skills, analytical reasoning and thinking skills, decision making and judgement, and finally, action management.

### Reference Check

Candidates are then asked to provide two professional references. In a telephone interview, each referee is asked to report on past achievement and performance in the following areas: analytical reasoning and thinking skills, decision making and judgement, action management, interpersonal relations and professional ethics.

### Interview

Candidates are then convened to an interview by a member of the Ministerial Advisory Committee to explore the following areas: analytical reasoning and thinking skills, decision making and judgement, action management, interpersonal relations, professional ethics and communication skills.

Any person interested in applying to be appointed an IRB member, should send his or her resumé to:

Director,  
Secretariat Services  
344 Slater Street  
Ottawa, Ontario  
K1A 0K1



## INTERNATIONAL TRADE

### UNITED STATES—RENEWAL OF SOFTWOOD LUMBER AGREEMENT—EXPORT IMPORT OF LOGS

*(Response to questions raised by Hon. Gerry St. Germain on April 3 and April 4, 2001)*

#### Log Export Controls

Canada's federal log export controls have been in place for over 50 years. Log exports are controlled for the purposes set out in Section 3(e) of the *Export and Import Permits Act* (EIPA):

*"to ensure that there is an adequate supply and distribution of the article in Canada for defence or other needs."*

Federal export permits are required for log exports from all provinces and territories. These controls are administered by the Department of Foreign Affairs and International Trade (DFAIT).

British Columbia maintains the most extensive restrictions on log exports, dating back to the 1900's. British Columbia approves or denies all proposed exports harvested from provincial Crown lands based solely on whether the logs are surplus to domestic requirements. To administer these surplus test requirements, the Province had established, many years ago, the Timber Export Advisory Committee (TEAC). TEAC determines whether logs proposed for export are surplus to domestic needs. The Province advertises the logs within the province. Processors have the opportunity to place non-binding bids on these logs. If TEAC determines that the prices offered reflect "fair market values" (FMV), then the Province refuses to issue provincial export approval and recommends that the federal export permit be withheld issuance as well. In those cases where no offers are made, or where the offers do not represent FMV, the logs are deemed surplus to domestic requirements and the Province issues provincial export approval. An application for a federal export permit is then submitted for approval.

For proposed exports from federal or private lands in British Columbia, the Federal Government has in place an MOU with the Province which lays out the terms of surplus testing. Under these terms, the Federal Government has established the Federal Timber Export Advisory Committee (FTEAC). This Committee operates in a similar manner as the provincial TEAC. FTEAC recommends to DFAIT whether proposed exports should be approved or denied. As in the provincial process, recommendations are based on whether the logs are considered to be surplus to domestic

requirements. Upon receipt of the recommendations, the Federal Government reviews all facets of the proposed export and takes into account other factors. For example, the Federal Government would consider whether similar logs were offered for sale but the purchaser only placed bids on the private logs. After this review, a determination is made on whether to issue the federal permit or not. In those cases where no offers are made, federal export permits are normally issued.

[English]

## ORDERS OF THE DAY

### KANESATAKE INTERIM LAND BASE GOVERNANCE BILL

#### THIRD READING

**Hon. Joan Fraser** moved the third reading of Bill S-24, to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence.

She said: Honourable senators, you will recall that Bill S-24 is implementing legislation for a historic agreement that provides the first legal recognition of a land base for the Mohawks of Kanesatake, as well as law-making powers over those lands.

[Translation]

When I spoke at second reading of Bill S-24, I tried to explain its historical importance. I did an overview of the agreement with respect to Kanesatake governance of the interim land base, which Bill S-24 will implement.

I also gave a glimpse of the progress made in recent years in negotiations between the Government of Canada and the Mohawks of Kanesatake. Since then, I have had the opportunity to hear the witnesses who have appeared before the Standing Senate Committee on Aboriginal Peoples and to further review the bill.

I am now more convinced than ever that Bill S-24 deserves our support. Let me explain why.

[English]

Honourable senators, as some of you know, I have an abiding concern for women's rights in Canadian society. That includes the rights of women, both Aboriginal and non-Aboriginal, in Aboriginal communities. In the case of Bill S-24, my questions related specifically to residency and to the division of matrimonial property upon the breakdown of a marriage.

I am somewhat reassured by the fact that Bill S-24 will be subject not only to the Canadian Charter of Rights and Freedoms, but also to the Canadian Human Rights Act. In this respect, Bill S-24 goes one step further than the Indian Act, which is now exempted from the application of the Canadian Human Rights Act.

Legal rights, however essential, are not the only consideration. When a woman faces eviction from her home, the fact that she can seek to enforce her legal rights through the courts may be cold comfort indeed.

Honourable senators, I am reassured by the history and culture of this First Nation. The Mohawks of Kanesatake have a long history of inclusion, not exclusion. They have welcomed women and their descendants, who were reinstated as a result of Bill C-31 amendments, and as a result the community has nearly doubled in size since 1985.

• (1440)

They have not discriminated against non-Aboriginal women or men who have made their homes with individual Mohawks in Kanesatake.

Honourable senators, I and some other senators questioned the silence of Bill S-24 on the matter of matrimonial property, but the fact is that Bill S-24 does not address the matter of matrimonial property because it does not deal in any way with interests in land, which is a matter that is, of course, generally engaged upon a division of matrimonial property. This matter will need to be addressed in future negotiations with respect to interests in land.

[Translation]

Like many of my colleagues, I was surprised at the close result of the ratification vote in Kanesatake. I wondered what this result meant — a victory margin of only two votes — and whether or not the process leading to the vote, or even the voting process itself, was flawed. However, I believe that the consultation and ratification process conducted by the Mohawks of Kanesatake was as comprehensive and inclusive as could be.

In the months preceding the vote, the council held two public meetings and over 50 small workshops to reach all members, both on and off the reserve. The council also informed the members of Kanesatake on a regular basis regarding the timetable and impact of the ratification vote. The council did not even prevent opponents from picketing in front of the polling stations.

[English]

Some Kanesatake members have criticized their council for having conducted only two public meetings. However, the

council opted for the informality and inclusiveness of workshops as a better vehicle for explaining the agreement than large public meetings.

Some members have criticized their council for according non-resident members the same voting rights as resident members. The council had chosen to accord every member of voting age an equal right to participate in the ratification decision. This practice had been followed in previous elections for grand chief and council, and the council saw no reason to depart from it on a vote as important as the ratification of the agreement. I think that was a sound decision. Here again, honourable senators, it seems to me that the council followed the path of inclusion, not exclusion.

Some Kanesatake members have criticized their council's decision to seek an independent legal review of its ratification process. That review was conducted by the Honourable Lawrence A. Poitras, a former chief justice of the Quebec Superior Court. Those who are critical allege that, because the council hired him, Mr. Poitras' opinion could not have been an impartial one. However, upon review of Mr. Poitras' opinion, it becomes evident that the council had indeed provided him with all material pertinent to the ratification process, including the materials that had been circulated in the community by those who opposed the agreement.

Honourable senators, Mr. Poitras, having reviewed the material and the process, concluded that the Mohawk council of Kanesatake "left no stone unturned in informing the Community of the...vote and the significance of the Agreement." As parliamentarians, I think that we should applaud them for their commitment to openness, equality and inclusiveness. We should respect the results of Kanesatake's democratic ratification process, however close the numbers, just as we would respect the results of any other democratic vote in this country.

[Translation]

Honourable senators, Bill S-24 represents an opportunity for the Mohawks of Kanesatake to return to their rightful place in our great society. The Kanesatake and Oka region is magnificent, offering its inhabitants a whole range of opportunities. However, sustainable economic development can occur only in a stable environment in which people know the laws and know they will be applied.

In settling disputes that have dragged on over several decades on the legal status of the lands and legislative powers of the Mohawks of Kanesatake, including their limits, Bill S-24 establishes the framework of such an environment. It will allow this community to turn its considerable energies and talents toward the future and will encourage its neighbours to join the Mohawks of Kanesatake in drawing on the region's enormous potential.



[English]

The mayor of the Municipality of Oka, Mr. Yvan Patry, spoke eloquently in favour of the bill before the Aboriginal Peoples Committee. He and his council have established a dialogue with the Mohawks of Kanesatake to address a wide range of issues of mutual interest to their respective constituencies. It is heartening and moving to think that Bill S-24 and the agreement it implements have provided the impetus for these two communities to come together in partnership. Both Mr. Patry and Grand Chief James Gabriel recalled the dark days of the Oka crisis in 1990, and both of them spoke movingly to the committee of their determination never to see such confrontation again.

Honourable senators, I would like to conclude by sharing with you my impressions of the vision that Grand Chief Gabriel expressed to the committee for his people. He evoked a future in which the Mohawks of Kanesatake mature as a democracy without losing sight of their traditional values and culture. In that vision, the community is open to new relationships with the world beyond while continuing to seek a just resolution of the grievances of the past. Above all, in the vision of Grand Chief Gabriel, we can look to a time when Kanesatake Mohawk children will grow up in a secure and prosperous community with all of the opportunities that they deserve.

It is an inspiring vision, and this bill will help to make it a reality. I urge you to join me in supporting it.

[Translation]

**Hon. Jean-Claude Rivest:** Honourable senators, I should like to stress, as my colleague has just done, the very great importance of Bill S-24 for the Mohawk community of Kanesatake and for the people living in the Oka area. This bill is a step toward greater autonomy for Aboriginal Peoples, and, in this case, the Mohawks. It is a limited agreement, which illustrates very clearly the general change in attitude that has occurred country-wide on the native issue, which, unfortunately, has long been marked by indifference and by a lack of concern. This has given rise, in a number of regions in Canada where First Nations live, to crises that everyone regrets. We feel today with the implementation of this type of agreement, of which there are a growing number with the Government of Canada and very many provincial governments, that, with the support of the Canadian public and the determination of all of the First Nations, their rights and privileges are fully recognized within Canada. We see that progress is possible and that they clearly argue in favour of improved living conditions and greater aspirations for all Aboriginal Peoples.

Honourable senators, this agreement is necessarily limited with respect to territorial unity, because a precise territorial demarcation was negotiated. Essentially, honourable senators will have understood that the Canadian government and the Mohawk nation concluded that there would be a certain number

of areas of governance that the Mohawks are obtaining for themselves in respect of this territory in order to give their community of Kanesatake the basic elements for taking control of their own future and of the future development of the community.

As Senator Fraser pointed out, one of the most interesting aspects of this agreement is the open-mindedness of the Aboriginal community, the Mohawk community, and the surrounding population; this must be reiterated and emphasized. Because of the Mayor of Oka's receptive attitude, the Mohawks will listen to and take into account the concerns of the mayor and of surrounding municipalities in any decisions they take for and by themselves concerning plans they have for their community. Although this is not included in the agreement, I am sure that, in their decisions, the municipal and local authorities in Oka will bear in mind the plans and ambitions of the Mohawk nation within the framework of this bill.

• (1450)

As has been noted, this bill is limited. It was the subject of intense discussions within the Mohawk nation, and the result of the referendum was extremely fragile. In many respects, this agreement falls outside the scope of the Indian Act. This legislation still exists. There is a desire to reach significant and practical agreements, which requires going beyond the Indian Act and, fortunately, Bill S-24 is designed to implement this agreement, as well as others signed in Canada.

Honourable senators, it bears repeating the importance that Canada's First Nations attach to the overhaul, or the repeal, it does not matter which, of the Indian Act so that Canada's Aboriginal Peoples know where they stand with respect to this legislation. They have made this point on many occasions. First Nations representatives across Canada do not want the federal government to act unilaterally. They want to be involved in the process when the federal government reviews the Indian Act.

At second reading, certain questions were raised concerning the statutes of Quebec. I have had some very worthwhile meetings with officials of Indian and Northern Affairs and have followed all the deliberations. The Government of Quebec, though its officials, has given full support to implementation of this agreement, which is important for the Mohawk people.

Despite ongoing concerns in the community, this agreement is absolutely essential for the Mohawk. Regardless of whatever reservations there may be, they must be given the chance to conclude this negotiation, which is aimed at one of the primary concerns of the Aboriginal Peoples: taking charge of their own destiny. This decision by the Mohawk community of Kanesatake is in line with the concerns of all Quebecers, since this territory is within Quebec. All Canadians support all of the efforts and all of the progress that are leading to the promotion and valorization of the so valuable presence and vitality the Aboriginal Peoples can bring to the Canadian identity.



**The Hon. the Speaker:** Honourable senators, it was moved by the Honourable Senator Fraser, seconded by the Honourable Senator Gill, that this bill be read the third time. Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read third time and passed.

[English]

## FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

**Hon. Bill Rompkey** moved the second reading of Bill C-18, to amend the Federal-Provincial Fiscal Arrangements Act.

He said: Honourable senators, I am pleased to be able to make some comments on Bill C-18. The bill is relatively straightforward. It honours the Prime Minister's commitment to remove the equalization ceiling provision for 1999-2000. He gave the undertaking at his meeting with the first ministers last September.

The current equalization arrangement is set out in the Federal-Provincial Fiscal Arrangements Act. The program provided by Parliament in March 1999 covers the fiscal years between 1999-2000 and 2003-2004. The 1999 legislation established a ceiling for payments in any given year. The ceiling limits the total amount payable in any specific fiscal year to the seven provinces receiving equalization.

Here is how the ceiling works. The current equalization program, like its predecessor, runs for five years. The first year of the program, 1999-2000, was taken as the base year. The ceiling for that year was \$10 billion. The amount was set early in 1999 at a level that would allow for substantial yet affordable growth in equalization payments between the last year of the former arrangement and the first year of the new one. The starting point, then, for the annual calculations is \$10 billion.

For the four years after 1999-2000, the equalization ceiling will increase each year by the cumulative growth in nominal GDP. For example, if GDP grew by 8.4 per cent in 2000, then the ceiling for 2001, the most recent fiscal year, would be \$10.84 billion. The ceiling rises annually, assuming that the GDP rises.

Equalization is a fiscal transfer. Seven provinces receive payments under it, all except Alberta, British Columbia and Ontario. The three territories do not come within the plan. As honourable senators know, Parliament makes provision for their financial support by other means. Each of the so-called receiving provinces — Newfoundland and Labrador, Nova Scotia, Prince Edward Island, New Brunswick, Quebec, Manitoba and Saskatchewan — receives an amount calculated on the basis of its population. When taken together with its own standard yield revenue, this payment gives each individual province the same amount it would have received had its own sources generated

taxes equal to the average per capita revenue received by the five provinces that are the benchmark, and they are Ontario, British Columbia, Manitoba, Quebec and Saskatchewan.

In a phrase, equalization takes money that the Government of Canada has collected in taxes from every Canadian and uses it to ensure that every provincial government receives the same total revenues it would have earned at benchmarked tax yields had its own taxpayers been able to pay that much. In a simplistic but accurate description, it is a form of guaranteed annual income. Any province that taxes its residents at the average national tax rate is assured of per capita revenues equal to the average of the five provinces.

The ceiling is triggered when the total of the entitlements of the receiving provinces exceeds the ceiling amount for the year in question. The calculated entitlements are then reduced on an equal per capita basis for every one of the receiving provinces until the total amounts no longer exceed the ceiling. This is a straightforward and very effective way of limiting the amount that the Government of Canada will be required to pay as equalization in any one year. It ensures that starting from the base year, the year-over-year increase will be no greater than the growth of the economy.

A ceiling is not a new concept. It was first put in place in 1982 and has been triggered four times in the last 20 years. It is a real and present fiscal reality, one that is very much in the mind of finance ministers of every one of the receiving provinces.

This bill, then, is not complicated. It simply removes the ceiling for the fiscal year beginning on April 1, 1999. The effect of the change is quite straightforward. Removing the ceiling will allow the federal government to pay approximately \$792 million to the receiving provinces for 1999-2000 on an equal per capita basis. Based on the current fiscal estimates released on February 27, 2001, each receiving province will receive \$67 per capita. That means that each province will receive the following amounts: Newfoundland and Labrador, \$36 million; Prince Edward Island, \$10 million; Nova Scotia, \$62 million; New Brunswick, \$50 million; Quebec, \$489 million; Manitoba, \$76 million; and Saskatchewan, \$69 million.

• (1500)

Honourable senators, this is a very important piece of legislation and I ask for your support. The Prime Minister's decision to remove the equalization ceiling was an integral part of an agreement struck with the first ministers when they met last September. That agreement renewed health care, improved support for early childhood development programs and strengthened other social programs. The Government of Canada, as we know, committed \$23.4 billion to the action plan. This bill implements the other part of the Prime Minister's commitment. The September agreement was a significant step forward in the enhancement of the services that the Government of Canada and the individual provinces provide to our fellow Canadians. It was also a significant step forward in the evolution of relations between the provinces and the federal government.

The bill is a good one, but I cannot leave the issue there. Equalization is so much a part of the very warp and woof of Canada's federal structure, and so integral a part of the very fabric of our life as Canadians, that I must take the discussion further.

Honourable senators, the present equalization arrangements are innovative and they go a fair distance to satisfying the needs they are intended to meet, but they do not go far enough. The national interest demands that the plan be taken further. As good as it is, it is still not good enough. I acknowledge readily that the case I am about to put is one that will hold to be an argument in favour of the provinces, because it calls for an improvement and a refinement of the equalization program. Part of our role, as senators, is to speak for our regions and our provinces.

The changes I advocate will cost money, but I make three points in support of putting them forward now. First, the Government of Canada can afford to increase the amounts paid to individual provinces. Second, there are serious systemic flaws in the present program that must be addressed and corrected. Third, and most important, the interests of all Canadians, as well as those of the federal and provincial governments, demand that these problems be resolved.

I do not need to say much about the fiscal situation. Canadians responded strongly and readily to the leadership of the Prime Minister and the Minister of Finance and their colleagues on this issue. Our national finances were in a perilous state in the early part of the 1990s. Canadians tightened their belts and swallowed strong medicine. The result is that our country's finances are now strong once again and the Government of Canada can afford to spend the money needed to address the most pressing national priorities.

Honourable senators, it is the provinces that need help now. They, too, have tightened their belts and asked their taxpayers to swallow strong medicine. Many of them, however, are still in straitened fiscal circumstances. This comes to pass because of the huge, constant and continuous increase in the cost of providing health and education services that Canadians expect and demand.

Every province is struggling with these issues, including the wealthiest: Ontario, Alberta, and British Columbia. The burden lies heaviest on the seven provinces that receive equalization. They are the ones least able to bear these costs. It is not their governments who go short because of this problem, it is their citizens, and they are our fellow Canadians. They deserve help.

The systemic flaws in the present system are the second reason I advocate further changes in equalization. Every senator knows that our Constitution holds out the promise of equalization. It is found in section 36(2) of the Constitution Act, 1982, and here are the words:

Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

Honourable senators will note that the Constitution sets down two standards by which equalization payments are to be measured. First is the promise of sufficient revenues to the provincial governments. The sufficiency of those revenues is determined by comparing the levels of taxation levied by each province. That is reflected in the present equalization principle, which is based on filling the gap between each province's per capita tax yield and the tax yield of the five benchmark provinces. That satisfies the first of the Constitution requirements.

The second, however, is lacking. Section 36 promises that the provinces will be enabled to provide reasonably comparable levels of services. That is where the present equalization arrangements fall short. That is why they must be improved. To give you an example, a study done by federal finance officials in 1994 showed that Newfoundland and Labrador's per capita expenditure on primary and secondary education was 122 per cent of the national average. The provinces' schools are good, but no person will argue that they are 20 per cent better than the average across Canada. The extra money spent by the provincial government is the cost of trying to provide comparable education services to our people, and even then, in too many cases, the services are still not enough.

There is a straightforward and appropriate way to remedy this deficiency. All that is needed is a method to measure the quantity of services provided by each provincial government to the women, children and men who live within its borders. While it may be difficult to measure the quality of the services, it is certainly not beyond our ability as a nation to measure their quantity.

Does a child in Newfoundland and Labrador have access to the same education as a child in the benchmark provinces? Does a Canadian living in Nova Scotia, or Quebec or Saskatchewan who needs medical help receive comparable assistance as that provided to one living in Ontario or British Columbia? We can answer those questions, and we should do so. That done, we can go on to determine the cost of providing a reasonably comparable level of public services in each province. That is the amount the federal government should provide to the government of each equalization-receiving province. The precise amount to be paid for services to a particular province will be decided by the same methodology; one that compares each province's per capita tax yield at standard rates with the cost of providing comparable services at the comparable national level. The equalization of revenues will continue.



Honourable senators, this is a simple solution but it is not simplistic. It will carry the constitutional promise forward into reality. It will help to ensure that every Canadian, no matter where he or she lives, will receive reasonably comparable services in return for the payment of reasonably comparable taxes.

I must say a few words about the so-called clawbacks. This is a subject that is getting much attention in my province at the present time; particularly as we anticipate a number of major developments, not the least of which is one of the richest nickel mines in the world in Northern Labrador. It is also important in Nova Scotia, and in lesser measure to several other equalization-receiving provinces. The issue is an easy one to describe. The money a province earns from the development of its resources is deducted from its equalization entitlement because natural resource revenues, including royalties, are part of the equalized revenues.

I acknowledge that the present equalization formula contains special provisions that reduce the effect of the clawback of resource-generated revenues, including the special arrangements for Hibernia and other offshore projects. Every dollar that the Newfoundland and Labrador government receives in royalties from Hibernia, for example, reduces its equalization entitlement by 70 cents rather than the full dollar. However, that only lessens the sting, it does not remove it.

There are two good sides to the argument. On the one hand, the receiving provinces make the argument, and it is a good argument, that they are paying 70 cents on the dollar to the Government of Canada by means of reduced equalization receipts. That is well beyond the marginal rate paid by even those Canadians fortunate enough to be in the highest income tax brackets. As against that, there is the equally compelling argument that an individual's entitlement to public assistance must take into account any money he or she receives from the public chest — the greater the income, the lesser the assistance. Both arguments fail to address, however, the stark reality of the federal-provincial tax regime.

• (1510)

It is beyond argument that a hugely disproportionate share of the total tax revenues generated by any resource development end up in the federal coffers, rather than with the province that owns the resource. I will not take the time of the chamber to say why this is so, but more than 80 per cent of the total tax dollars generated by any project go to Ottawa rather than to the provinces. Eighty per cent of the total tax dollars generated by the development at Voisey's Bay will go to the federal government rather than to the province. That stark fact alone justifies a special arrangement in respect of resource revenues.

There is another equally compelling fact that must stand beside the first one: There must be a degree of certainty in government revenues, and public policy must encourage

governments to plan ahead rather than to act solely in the short term. It is in the public interest to develop our resources efficiently and effectively. The provinces are primarily responsible for such developments both as the ultimate owners of these resources and because of the powers vested in the provincial legislatures by the constitutional division of powers.

At the very least, the proposed clawback should be adjusted to provide a phase-in of revenues from new developments. There is no magic about the 80 per cent clawback figure. It is just as logical to suggest that revenues should be clawed back over a 10 or 20-year period. Perhaps an additional 5 per cent of the revenue could be taken into the equalization balance each year after a grace period to allow these projects to recover their capital costs, as royalties really do not begin until then. That would give the provinces an opportunity to adjust their public finances. It would also give the poorer provinces, including mine, an opportunity to use new resource-based revenue to improve services rather than simply reduce their equalization payments. Such a course offers a reasonable compromise between two equally compelling arguments. That is the classic Canadian way to solve such dilemmas.

Equalization has been a central part of federal-provincial financial relations since 1957. Some wrongly describe equalization as being a means of transferring money from affluent provinces to the less affluent, but we should expose that for the fallacy that it is. Equalization is a program of the Parliament and Government of Canada. Every citizen of Canada according to her or his means pays for equalization. An affluent resident of Happy Valley-Goose Bay or Saskatoon makes the same contribution as does an equally affluent person living in Toronto, Calgary or Vancouver. Conversely, a less affluent Canadian living in Alberta or Ontario makes no greater contribution to the cost of the program than does a Nova Scotian or a New Brunswicker in the same economic circumstances. Equalization is a national program paid for by the Government of Canada using the money it raises by taxing every Canadian.

Equalization has commanded widespread support from provincial premiers including Earnest Manning, Peter Lougheed, John Robarts, Bill Davis, Mike Harris and Ralph Klein. Equalization has consistently had the strong support of every fair-minded Canadian.

The present arrangements run until 2004. I understand the Minister of Finance is prepared to look at other ways to achieve the goal of ensuring that every Canadian has access to reasonably comparable services while paying reasonably comparable taxes. There are ways in which additional financial assistance can legitimately be provided to provinces that need it without doing damage to the present equalization arrangements. I urge the minister to enter into discussions with his provincial colleagues about these alternatives. The disparities between and among the several provinces have become even greater, and the need to try to lessen those disparities increases in like measure.



The equalization program is a uniquely Canadian answer to a uniquely Canadian need. It works well. It has done much good, but it is not perfect. My plea today is that we move now and quickly to make it even better. In the meantime, I ask every member of this house to support Bill C-18.

**Hon. Nicholas W. Taylor:** Will Senator Rompkey entertain a question?

**Senator Rompkey:** Yes.

**Senator Taylor:** First, I congratulate Senator Rompkey on an excellent speech which speaks to the foundation of Canada and how we are put together a little better, I think, than what goes on south of the forty-ninth parallel.

Senator Rompkey mentioned section 36 of the Constitution in regard to equalization. For my own information, when was that section included and has it been amended since that time?

**Senator Rompkey:** Honourable senators, section 36 is part of the Constitution Act, 1982. That particular provision has not been amended since that time.

**Hon. Lowell Murray:** Honourable senators, that was an extremely interesting speech from Senator Rompkey. As the sponsor of Bill C-18, Senator Rompkey outlined fully the provisions of the bill on behalf of the government. Senator Rompkey went on to advocate various changes that many of us believe are necessary.

Under the circumstances, since Senator Rompkey combined both an explanation of the government's bill with some advocacy of his own, I think it is fair to ask him where the government brief left off and the Rompkey brief began.

**Senator Rompkey:** Honourable senators, as I make my calculations, I think it was on page 23. Senator Murray is quite right; the first part of my intervention was an explanation of the bill itself, a simple bill to remove the ceiling. I said that equalization is good, but it is not perfect.

What honourable senators should be examining is where equalization is inadequate and how it might be improved. That is what we do in the Senate. We take legislation, ideas, policies or programs and examine them to see how they can be improved.

This bill should be passed, but we can use it as a vehicle to give full examination to the equalization program to see how it could be improved.

On motion of Senator Comeau, debate adjourned.

## TOBACCO YOUTH PROTECTION BILL

### THIRD READING

**Hon. Colin Kenny** moved the third reading of Bill S-15, to enable and assist the Canadian tobacco industry in attaining its

objective of preventing the use of tobacco products by young persons in Canada.—(*Honourable Senator Taylor*).

He said: Honourable senators, through Bills S-13 and S-20, Bill S-15 has had a long journey to get to this stage. I thank you for your patience and indulgence. I understand that those of you who have heard this speech before will accept a condensed version at this time.

I feel very strongly about Bill S-15. The purpose of this bill is to protect Canadian children from tobacco. It is to assist young people to stop smoking if they have already started, or to ensure that they do not start using this product.

• (1520)

Honourable senators, I have had a great deal of help in this process. As I look around the chamber, it is hard to find the face of a person who at one time or another did not help me one way or another. I see people who have helped with budgets. I see people who have given of their time. I see people who gave good advice and who had good ideas. I see people who encouraged me and said, "Don't quit." I want to thank all of you for that assistance.

Outside this chamber, there has been tremendous support for this measure from staff, voluntary organizations, members of the medical community, and from the country at large. I suspect that some of you may have received a letter or two. I know that I have. I think we know there is a large measure of public support and agreement for a measure such as this one — in fact, specifically for this measure. We have had that demonstrated to us in numerous ways.

Honourable senators, I should like to point out that we are losing 45,000 Canadians a year and that some 250,000 young people under the age of 18 are taking up smoking every year as we speak. Since I started on this legislation, that amounts to 1 million young kids who have been trapped by tobacco — 1 million.

Tobacco is the leading cause of preventable death in Canada. The 45,000 number I talked about compares with car accidents, which is in second place in terms of preventable deaths, including deaths caused by drunk driving, which total 4,000. By a factor of 10, smoking kills more Canadians than any other preventable cause.

It is expensive, not just in lives. The direct health costs are \$3 billion. The indirect costs, including lost time, fires and people who, for one reason or another because they have a tobacco-related disease, cannot go to work, is estimated by Statistics Canada to total in excess of \$7 billion. Thus, there is a total loss to the economy of \$10 billion per year.

One of the interesting things about comprehensive tobacco control programs like the one we are proposing in this bill is that there is a payback for them, and an important payback. The first payback is obvious. If you have a program that starts to work, you save lives and reduce sickness. That is the really important payback. However, if you are just interested in the dollars paid back, we have a study from California that shows that over the past eight years they have been able to reduce tobacco-related health costs by \$8.2 billion. While everything else has been going up, tobacco-related health costs have been going down in California.

For every dollar that California has have spent on their tobacco control program, they have been able to demonstrate that they have saved \$3.62 in reduced health care costs on tobacco-related diseases. It is not a cost really, it is a profit centre. It only stands to reason. Why are we spending tiny amounts at the front end and huge amounts at the back end, when we know that, if we use some of the back-end money that we are spending to cure these people to the front, they will never get the disease, they will not go through all the suffering and we will save the money in the middle?

There really is a payback. It makes good fiscal sense to do this. What is happening right now in the country? I must tell honourable senators that the rate of smoking is going up, and it is serious. In 1990, the youth smoking rate was 21 per cent in Canada. The last time it was measured by Statistics Canada for Health Canada it was 28 per cent.

Two years ago, 80 per cent of the kids taking up smoking were starting before the age of 16. Last year, Health Canada reported that 80 per cent of kids are starting before the age of 14. They are starting at the ages of 9, 10, 11 and 12. We are talking about pre-teens. This is a bill about pre-teens. That is why it is so important. It is about the people we really want to protect.

From time to time, we hear the tobacco industry saying, "This is a question about freedom of choice. People are old enough to make up their own minds. They can decide for themselves." If you are an adult, you probably can decide for yourself. This bill does not address adults. It addresses people who are minors as defined by the Tobacco Act, those either 18 or 19 years old. The bill really focuses on our young kids — your children and your grandchildren, who are being made susceptible to tobacco every day.

Smuggling rears its head every time we talk about this issue. Smuggling comes up because we hear people say, "Oh gosh, if we raise the taxes on tobacco, we will have problems. We will see the smuggling that we saw in 1994. That will cause grief in Canada again. We will have lawlessness."

It just isn't true, honourable senators. Right now — and this is after the \$4 excise tax increase on the fifth of last month — a carton of cigarettes cost \$37.58 in Quebec or \$36.76 in Ontario.

The same carton of cigarettes in the contiguous states of Minnesota, Michigan, New York, Vermont, New Hampshire and Maine costs \$52.72, \$57.43, \$63.47, \$53.10, \$50.93 and \$58.71, respectively. In every one of these states, the cost of a carton of cigarettes is well more than \$10 more expensive than it is in Canada. If there is to be any smuggling, it will be from the North to the South, not from the South back up to the North.

There is some serious smuggling going on in Canada. It is going from East to West. We have real problems with cigarettes going from Quebec and Ontario into Western Canada. That is because the price in Alberta, for example, is \$42 per carton, while in B.C. it is \$50 per carton. These serious smuggling problems have nothing to do with this bill. That problem can be solved by provincial treasurers getting together with the Minister of Finance to harmonize tobacco taxes. I would like to dispel completely from the minds of honourable senators any worries they might have in relation to smuggling. It is simply not a problem and should not be a concern for us here.

Briefly, honourable senators, I will talk about a tobacco control program. This bill is based on the Atlanta Centers for Disease Control best practices for tobacco control, dated August 1999. The Atlanta centre studied all 50 states of the United States. It came up with a document that outlined the best practices they could find throughout the country. I am sure there is no one in this chamber, and there is certainly no one in any of the medical communities, and we have endorsements from every provincial medical association in the country, as well as from the CMA and the national associations representing dentists and nurses, who questions the Atlanta Centers for Disease Control as being the authority on public health. We have based this bill on that in many, many respects.

A comprehensive tobacco control program often gets confused by people. I am forever asked: "What is the silver bullet? Tell me the one thing that will get kids to stop smoking." It is a trap that we as politicians can fall into. I urge you not to look for a simple, one-shot solution. Kids do not have one-shot thinking processes. They are complex, just like everyone else. The secret of a comprehensive tobacco control program, which is working effectively in many states right now, is that messages are being sent to children from a series of different directions.

• (1530)

Often we get an analogy from witnesses where they talk about the landing at D-Day. One interesting witness described how there was no proper air cover at the Dieppe landing and there was not enough artillery. There was only an infantry group going up on to the beach to get slaughtered. He said that people learned some lessons there so that, on D-Day, the airforce was there, the artillery was there, the beaches were softened, the paratroops were dropped and the commandos came up the cliffs. Then the troops came in, in large enough numbers to really make it happen.



Introducing a measure in the right size is very important. A comprehensive tobacco control program means not just presenting it in the schools. Schools are important. The program must run in the schools, but not just in the schools. It must run in the schools, in the community centres, in the YMCAs. "Quick lines," cessation lines, must be available so people can get help over the telephone. Public information must be available to people via radio, television and the newspapers. The consistent and coordinated combination of these efforts done often enough — and that is very important — will make an impact on how kids think about tobacco and smoking, and things will slowly change. The program will work. It will be successful.

California has a terrific model, honourable senators. Canada, as I said, has a 28 per cent youth smoking rate. California has a 6.9 per cent youth smoking rate. Is that not a target we should be aiming for? Massachusetts has had a 24 per cent overall drop in youth smoking since 1996. Florida junior high-school students have dropped their level of smoking by 40 per cent in just the last two years.

With regard to spending, the Atlanta Centres for Disease Control recommends that Canada spend somewhere between Can. \$9 and \$22. We are currently spending 66 cents per capita. In this bill, we have selected \$12 per capita. It is in the bottom quartile, but it is not 66 cents. Vermont is spending \$22 per capita, Mississippi \$15 and Ohio \$33. We are not talking about outrageous numbers compared to some other jurisdictions. Twelve dollars is not out of the ballpark. It is a reasonable figure if we want to accomplish the same results that we are seeing in some American states.

We are doing it with a levy which, for industry purposes, works out to three-quarters of a cent per cigarette, or \$1.50 per carton. That adds up to \$360 million per year.

A levy is important, honourable senators. What is attractive about a levy is it provides stability because the funding will definitely be there. The biggest problem affecting the health community in past decades has been the erratic and undependable funding; they cannot plan from year to year. A levy gives them an element of predictability. This is a levy for industry purposes.

Why do we say that? We say that because the tobacco companies came to Parliament on several occasions and said that they wanted a vehicle similar to this. In fact, two out of three manufacturers, who produce 80 per cent of the product, came before our committee and testified that they endorse the bill as written. Their newspaper ads stated that they are prepared to spend \$400 million in perpetuity to support this program. They will not have a seat on the board, nor will they amend one word in the bill. They will not have a chance to control anything. Their sole participation is to write a cheque on the fifteenth of each month, and if they fail to do so, they could go to jail and be fined.

Honourable senators, we have the tobacco industry on board with us. The industry is volunteering to pay for this program. I

should say that the industry is not really volunteering because we know that it will pass the cost through to smokers; there is no doubt about that. There is a certain logic in having smokers pay to help keep young people off of cigarettes in the future.

Honourable senators, dedicated levies work. They are politically popular. I get pushed back on the basis that this program is based on a dedicated source of funding. However, in all of my experience in dealing with the public, I have yet to go up to a door, knock on it and be told by a voter that one of the things that upsets him or her is dedicated taxes or dedicated funding. That has not happened once. I have been knocking on doors since 1968.

Actually, I hear people saying that they do not like sending money up to that big black hole in Ottawa called the Consolidated Revenue Fund; they do not know where the money is going. Folks like to put a loonie in the Coke machine and have a Coke come out. That is why people like this bill. They know where the money is coming from and they know where the money is going. From a procedural point of view, the money is coming from the tobacco companies and going directly to the foundation. It never goes through the Consolidated Revenue Fund.

Money bills deal solely with appropriations and supply. Bill S-15 does neither of these things. That is important to remember. We will hear a debate about that. If this bill passes through this house, I hope that we will hear a debate about that in the other place. This bill does not appropriate funds and is not a supply bill.

Very briefly, there is transparent decision making. There are rules to deal with conflict of interest. There is independent governance. There is a 5 per cent cap on administration. Ten per cent is set aside for evaluation.

Honourable senators, we do not evaluate projects in Canada. Health projects go on all the time without ever being properly evaluated. We doom ourselves to repeat the same mistakes over and over again. With this bill, there is a requirement that every project be evaluated by an evaluator appointed before the money is forwarded. Benchmarks allow us to see whether the bill is performing as it should. Transparency is important so that we know what fails and succeeds. We can eliminate projects that are failing and encourage the ones that are succeeding.

There is an annual report to Parliament. There is an audit by the Auditor General. There is a five-year review by Parliament. The committee came to the conclusion that if in five years the case cannot be made that this program works, maybe folks should take another look at it. Maybe it should be tossed out. I believe it can work in five years. I believe it will work in five years. The provision for a five-year review should give people here and in the other place confidence that we are not just setting up a program to run in perpetuity without anyone keeping an eye on it. An annual report to Parliament and then a five-year review are both required elements.



Honourable senators, you have been more than patient, and I appreciate you being so attentive. I ask for your support of Bill S-15, the Tobacco Youth Protection Act.

• (1540)

**Hon. John G. Bryden:** Honourable senators, I had not planned to speak, however, I need to explain to some extent my outburst of the other day. The Speaker *pro tempore*, as often happens, indicated that the sponsor of the bill had moved the third reading. Perhaps because I am from the same province as the sponsor of the bill, the Speaker *pro tempore* indicated that Senator Bryden had seconded the third reading. I indicated, probably being out of order, that I was the least appropriate person to have been seconding it since I do not agree entirely with what has occurred in the history of this bill.

Someone said, Senator Taylor probably, that I must have shares in the tobacco company. That is not the point of my concern. I am opposed to smoking. I am opposed to tobacco. I had smoked at one time. I have a heart that carries the scars of having smoked for many years, although I did not start when I was particularly young.

I am probably not the only person in this chamber who might say, "I once smoked." Indeed, I would guess that if we had a full complement of 104 people, and I asked for a show of hands how many of the senators once smoked, I should think that it would be a significant majority. If I were to ask my colleagues how many of them smoke today, believing that I know most of them, there probably would be a half a dozen.

It once was that an ashtray would be across from each chair at board meetings or cabinet meetings. Senator Lawson probably could not have negotiated a contract at one time if he did not have an ashtray full of butts.

Honourable senators, many people have changed their position regarding smoking. Many people have become educated. Many people have realized that smoking tobacco, cigarettes in particular, is a killer. It kills people.

I agree with that. That is a fact. That is the reason that I do not smoke any more. I stopped before it did kill me. There is no question, and I think we need to remember this, that human beings do learn. People who once smoked sometimes realize that it is in their best interest to stop. Many of us have done that.

Young people are vulnerable. Many young people who start smoking will have difficulty in stopping, and some of them may never stop. If we could save one life, then whatever we do to achieve that is worth doing.

My objection to Senator Kenny's bill is not an objection to what he is attempting to accomplish. He is attempting to reduce the number of people who smoke and reduce the number of young people who begin smoking. My objection is that this bill is not properly before this house, in my opinion. That was my opinion for Bill S-13 and then Bill S-20 in the last Parliament, and it is now my opinion for Bill S-15. This bill is not properly before this chamber.

Bill S-15 is a tax bill, in my opinion. As such, it cannot properly be passed here. I have made this argument before. I made the mistake of not making it the last time when someone said that we had unanimous consent in support of the bill.

Honourable senators, I want to make it clear that I am concerned about the process. If it is a tax, it is a dedicated tax. There is a reason that we do not use dedicated taxes frequently, if at all, in a parliamentary democracy.

The terminology is that it is not a tax, it is a levy. I have much difficulty making the difference between Bill S-15, which will charge \$1.75 per carton, and the bill that was introduced from the other place today, which will charge \$2 per carton. One is called an excise tax; the other one is called a levy.

Each of those bills is addressing the currency of the land. Each of them drives up the price of a carton of cigarettes. Each of them will be used directly or indirectly for the public good, presumably.

That which is contained in this bill was rejected by the last Parliament in the other place on procedural grounds, for want of a better term. It was rejected because it was not proper that the bill came through the Senate to be presented to the House of Commons. There was an objection made, and without going into the details because I do not understand all of the details, the Speaker in the other place, even though our Speaker ruled differently, ruled that the bill was not a proper matter to have come from the Senate. As I recall, the basis of that decision was that it was a tax bill.

I understand that changes have been made that corrected the bill. I have gone through the bill, and I have compared the taxing sections, or the levy sections. The House of Commons did not accept clause 35 of Bill S-20. I have compared that clause with clause 35 of this bill.

Honourable senators, I could find no significant difference that would make the House accept the bill this time, whereas it would not accept it last time. Although every one has institutional memory, the only possible difference between this bill and the previous bill being considered by the other place is that the Speaker and the Clerk are different. Maybe that is what makes it different. I do not know.

I wonder if people have thought about this from the point of view that it is a legitimate cause, as it is, to discourage young people from smoking and that it is the best method of serving that cause, then what other causes exist that are equally legitimate? Surely, the tobacco companies' products could have a levy on them that would be paid to the Heart and Stroke Foundation. There is no question in any doctor's mind or in the position of the Heart and Stroke Foundation that of all of the single causes of heart attacks and strokes, tobacco is probably the greatest cause that could be controlled in some fashion.

However, should not funds go to organizations working in the areas of breast cancer or prostate cancer? We know that tobacco contributes to those illnesses as well. Why not use a levy on cigarettes and other tobacco sticks to fund the research that is so badly needed in relation to those significant issues?

• (1550)

I believe that one of the reasons this approach is not taken is that in our parliamentary democracy we have developed over many years a process of government under which we prioritize significant issues. A government is elected on a platform of policies and from that it selects priorities. In order to fund those priorities, there is a budget. The budget is debated and approved or not approved by the Parliament of Canada. Then there is supply. Taxes are levied in a proper fashion by those responsible for doing so. Tax dollars, be they from tax on a pack of cigarettes or from tax on income, come from the voters' pockets. The funds are sourced in a general way and are spent on the priorities for which the government is ultimately responsible. Supply is debated and questioned in committees. The government is audited and ultimately held responsible by the people for choosing the right priorities and spending tax money wisely. Based on that, the people can decide whether the government deserves to continue in office.

Something new has been added, and that is that the tobacco companies now support this bill. They did not support Bill S-13 or Bill S-20, but they are supporting Bill S-15. When Bill S-13 and Bill S-20 were around, tobacco companies were still allowed to sponsor cultural and sports events. That right has since been removed by the government. There has been a dramatic change in the public relations approach of big tobacco companies in the last few years.

That shift is not because they do not want to sell any more cigarettes or to make a profit from people smoking. I am reminded of the phrase, "Beware of Greeks bearing gifts." Perhaps one small part of those gifts is that big tobacco companies are now publishing informative, glossy magazines on topics of interest to various segments of the population. These attractive magazines are distributed for free and are, of course, left lying around on coffee tables. It just happens that the words "du Maurier Corporation" show up in those magazines.

I do not really believe that big tobacco has decided that they do not want to sell cigarettes to Canadians of any age any more. I believe that we are seeing a shifting of the ground. I do not know where this is going, but I am very reluctant to be thought to be a part of it.

Senator Kenny, the sponsor of this bill, deserves a huge amount of credit. He has been a tireless and dogged promoter of his proposals, which proposals were first contained in Bill S-13, then in Bill S-20, and now in Bill S-15 that is being read for the third time today. Senator Kenny has raised the profile of this issue in the press, in the public and in government. In promoting his three bills over the last few years, he has travelled thousands of miles, given dozens of interviews, and met and corresponded with many organizations and probably thousands of individuals. In promoting the position of his bills, he has incurred hundreds of thousands of dollars of expense.

Bill C-26, which was given first reading in the Senate today, may not exist if not for Bill S-15. Senator Kenny has single-handedly generated a huge amount of publicity and interest over the last number of years.

**The Hon. the Speaker:** I am sorry to interrupt Senator Bryden, and perhaps I should not be doing so. Our rules provide that the sponsor of a bill has 45 minutes, as has the senator speaking immediately thereafter. However, there has from time to time been a request by the opposition to interpret this rule as meaning that there are 45 minutes for the sponsor of the bill and 45 minutes for the first speaker on the other side.

I rise now anticipating that the chamber may wish to observe that custom. Senator Kinsella may wish to comment on this. I do not know whether anyone on the other side wishes to speak. This is a bit of an unusual situation in that this is a private member's bill.

I rise to make that observation. I apologize for interrupting the comments of Senator Bryden. I could interpret the rules to mean that Senator Bryden may speak for 45 minutes, but to preserve the ability for a senator on the other side to speak for 45 minutes as well, perhaps I could simply ask for leave for Senator Bryden continue.

Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** That solves the problem.

**Hon. Marcel Prud'homme:** His Honour has raised a very important issue and I am very pleased that he did. Surely the spirit of the rule is that the first speaker, in this case Senator Kenny, may speak for 45 minutes. However, it must be mentioned in today's debates that the spirit of the rule, both here and in the other place, is not that another member from the same side may speak for 45 minutes as well.



• (1600)

The spirit of the rule exists so that someone from the other side may participate. I will not participate except in the discussion on the rules. For the future, we must protect the spirit that gave birth to the rule that the first speaker has 45 minutes and the first speaker from the other side also has 45 minutes.

I do not object to giving more time to the honourable senator, but I believe that the spirit should be followed. The rule was written so that senators from both sides of the house could have equal time; otherwise it makes no sense. It would be like saying that the first two speakers that rise will have 45 minutes.

Honourable senators, I am in the hands of the government and the opposition, if they have an opinion to add to my comments. However, I am concerned that we might set a precedent today. In the future, someone could quote to the house that it was let go on this date and no one spoke. Accordingly, that is the way it will be.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I concur with Senator Prud'homme's analysis, but in this instance we yielded to Senator Bryden. He is doing a marvellous job.

**Senator Bryden:** Honourable senators, there is a fundamental flaw in the process. This is not a criticism of the sponsor of the bill, Senator Kenny. He used the devices that are available. I just do not believe that this is a proper one. I wish to use this as an example.

I dare say that there are many senators who have an issue that they deem to be of overriding importance in respect of our society. As examples of that, child poverty is extremely important to me and child prostitution is of overpowering importance to Senator Pearson. Narcotic addiction is another important issue to many because it ruins so many lives.

Those issues are no more — except perhaps in our minds — legitimate than Senator Kenny's stance on the issue of young people and smoking. That is a legitimate concern.

My only problem, honourable senators, is whether we should introduce such a bill in this place, because it levies charges from a source, just so that we might address this kind of issue.

I do not believe that we should for we could end up with chaos. Our system of parliamentary democracy and responsible government has developed into what we have today. Sometimes it move too slowly and sometimes too quickly, but the system continually evolves. It gets tweaked every once in a while, and thereby keeps us all within our boundaries. In fact, we would all head in different directions on the important issues if we did not have such a system. Where does the accountability come from?

Honourable senators, I am aware that this is an inappropriate time for me to raise this matter. I should have raised it at second

reading, or in committee. The fact of the matter is, I do not expect that what I have said this afternoon will have any effect on what I believe is the will of most of the people in the chamber, that this bill pass and be sent to the House of Commons.

Honourable senators, I know many of you do not agree with me and I would not expect you to. However, it is necessary to enter this point into the record, as the bill goes through the Senate. That is my intention. The last time this came through the chamber, I fired my shot at second reading and yet it was passed at third reading. I did not happen to be at the meeting where everyone was asked if they were favourable to this legislation. I did not want that to happen this time.

If not this time, then perhaps the next time there is an important issue that we wish to address, we may choose to address it from a different angle, for example by putting pressure on government through inquiries.

**Senator Kenny:** Would the honourable senator accept questions?

**Senator Bryden:** Yes.

**Senator Kenny:** I appreciated the honourable senator's remarks and the points made. Was the honourable senator aware that all of the points he made had been made in this chamber during the course of the previous bill to the previous Speaker, and that he had ruled in favour of the bill?

**Senator Bryden:** Could the honourable senator please repeat the last part of the question?

**Senator Kenny:** I was asking if the honourable senator was aware that each of the points that he just made so eloquently had already been made to the previous Speaker, Senator Molgat, and that he had ruled that the bill was in order?

**Senator Bryden:** Yes, I am aware of that, honourable senators, and I am not saying that this Speaker would reverse that ruling. I am saying that when the bill went somewhere else, it was ruled out of order for the reasons that I have suggested. I am not asking for further reasons. This chamber can do with the ruling by the former Speaker as it wishes. It is properly here, and we can pass it, reject it, or amend it.

**Senator Kenny:** If I may, is the honourable senator aware of the principal reason that the Speaker in the other place gave for the objection to the bill?

**Senator Bryden:** Perhaps the honourable senator could remind me.

**Senator Kenny:** Honourable senators, if I could paraphrase, the Speaker of the other place said that, in his view, common sense should prevail, and that he could not understand how this could be a levy for industry purposes, if the sole purpose of the foundation was to destroy the industry's future market.



The parts that the honourable senator referred to in the bill, that he suggested were not changed, were not the relevant parts. The relevant parts are Part IV and the preamble. Those parts remind the Speaker in the other place of the different times that the industry has come to Parliament to request a bill of this nature. It is clear that the Speaker in the other place was not aware of that when he made the ruling, and consequently, it was included in Bill S-15. I am hopeful that, this time, that fact will not be overlooked.

**Senator Bryden:** Honourable senators, I am aware that provisions had been added to this bill and have read about the changes in respect of the uses for the money. I realized then what the honourable senator had indicated; why would the industry do something that would ultimately reduce their income?

Honourable senators, although the words are different and the paragraphs are different, I still cannot accept the idea that what is being done by the industry is in their best interest, in consideration of the term "levy." It may be in their best interest now, since they have changed their position. No matter how you frame it, it is difficult for me to find that by taxing the industry — by driving the price of a carton of cigarettes up by \$2 in this bill and by \$1.75 in the new health bill — it will, somehow, in the long run, increase their profits. I realize that the honourable senator made some changes in Bill S-15.

• (1610)

**Senator Kenny:** Honourable senators, if I may address another question, is Senator Bryden familiar with the Copyright Act of 1997 where a levy that is virtually identical to this levy was introduced without a ways and means motion?

**Senator Bryden:** I think I am aware of it in that I read about it in the press the way most people do. I was not involved in that particular issue in Parliament.

**Senator Kenny:** Is the honourable senator aware that that levy, which was introduced without a ways and means motion, as well as an oil spills levy in the mid-1980s, which was also introduced without a ways and means motion, were found to be in order by the Speaker in the other place?

**Senator Bryden:** I believe that I was aware of that fact.

Since the honourable senator is conducting a cross-examination, I will do what I would do if I were in court being cross-examined. I would say that I should like to see the details of each one of those cases. I would be very surprised if they are absolutely, directly parallel with the matter before us.

**Hon. Lowell Murray:** Honourable senators, I was the Chairman of the Standing Senate Committee on Social Affairs, Science and Technology which approved unanimously, without any dissenting votes, a predecessor bill sponsored by Senator

Kenny. I had some reservations at the time about the bill but did not express them. I had the perfect right to do so but felt that as chairman I should not intervene in the debate. That is a matter of some slight embarrassment to me today.

I will now add considerably to the embarrassment and discomfiture of Senator Bryden by telling him that I agree with his position in particular regard to the dedicated tax. I am not a sufficient procedural expert to be able to make an expert judgment on the procedural question of whether it is proper that this bill originate in the Senate. If Senator Bryden and I are right that this is a dedicated tax, then it should not originate here. Wherever it originates, I have considerable difficulty with the principle of a dedicated tax, and I believe Senator Bryden also does.

As a third cause for embarrassment, I do not often agree with the Department of Finance. In this case, I believe their position is sound in principle.

I wanted to make those comments, honourable senators, because I admire Senator Bryden for having braved the considerable majority that I think exists in this place in favour of the bill. He probably thought he was in a minority of one. I simply rise to assure him that he is in a minority of two.

**Senator Bryden:** We stand back to back.

**Hon. Nicholas W. Taylor:** Honourable senators, I was Chairman of the Standing Senate Committee on Energy, the Environment and Natural Resources that held hearings on this matter. We held hearings in Vancouver, Calgary, Edmonton, Toronto and Montreal. Outside the committee, a subcommittee held hearings in St. John's and Halifax.

By the way, honourable senators, I was not the one who mentioned that Senator Bryden might have had tobacco shares. I did not think he was that rich. Someone else might have.

Why a new foundation? In committee hearings, a number of people suggested that if we were to set up a foundation, they would be glad to spend the money for us. We thought an independent foundation was the best way to proceed.

I come from a provincial legislature and from the West where dedicated taxes are very much part of the whole populace movement. Westerners have a great fear of giving any politicians a dollar and telling them to spend it where they see fit. Dedicated taxes are very much a part of the populace movement.

The country cannot be run on dedicated taxes, but I was in the opposition for years and years and therefore wanted all taxes dedicated so I would have a say in them. When you are in the government, you do not want any dedicated taxes because you like to be able to ride roughshod over the landscape and spend it where you want.

Why do tobacco companies support this bill? The committee could not find that out either. We went back and forth. We heard different reasons. One group thought that supporting the bill makes smoking sound like an adult pleasure and that therefore the juniors will all want to smoke. That was the suspicious point of view. Another one thought that tobacco companies support the measure because they feel it will not get anywhere and that Senator Bryden's and Senator Murray's idea will rule the day. The companies feel that the bill will be thrown out, but they want to be on the side of the angels. If it were to be thrown out, they could say they supported it. If it passed, they could say they supported it. Either way, I am passing on opinions.

I am the chairman of a large committee. We have had up to 12 senators attend at different hearings. It was unanimous that something had to be done and that it had to be done with a large amount of money. You cannot get by with just a dollar. It is like putting air in a tire. If you only put in five pounds and the tire should have twenty, you will end up in as bad shape as if you had no air in there at all. We wanted to have a large amount of money, and that notion appears to be supported by many American states.

The committee also heard a concern that this approach may not be right and that we might be embarrassed. Well, to hell with that noise. Anyone in the Senate should be able to bring forward any kind of bill they want. It will be debated and either passed or rejected. We should not pass Bill S-15 or reject it because we think someone way back somewhere will pull out a bible or a book and say that we are not right. In other words, honourable senators, if you feel this is the right thing to do, vote in favour of the bill. If you do not think it is the right thing to do, vote against the bill. However, if you feel it is the right thing to do, you should not be worried that somewhere down the line the bill will be thrown out.

That is all I have to say.

**The Hon. the Speaker:** Honourable senators, it is moved by the Honourable Senator Kenny, seconded by the Honourable Senator Kroft, that Bill S-15 be read the third time now.

Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed

Motion agreed to and bill read third time and passed.

• (1620)

## NATIONAL HORSE OF CANADA BILL

### SECOND READING—DEBATE ADJOURNED

**Hon. Lowell Murray** moved the second reading of Bill S-22, to provide for the recognition of the *Canadien* Horse as the national horse of Canada.

He said: Honourable senators, I can assure colleagues that this is not a money bill. There is no expenditure of funds involved

and it is entirely proper that it originate in the Senate. I intend to make a few introductory remarks on this matter at the moment and then, with your indulgence, I would propose the adjournment of the debate and complete my remarks at a later date.

Let me begin by saying that the subject matter of this bill is of interest to a considerable number of people in rural Ontario, where I live, specifically in Lanark County. In Pakenham, where I reside, there are people who are active members of the Canadien Horse Breeders of Ontario. One of our parliamentary colleagues, who also hails from another part of rural Ontario, Mr. Murray Calder, MP, the member for Dufferin—Peel—Wellington—Grey, has a bill before the House of Commons at the present time that, in all important respects, is identical to this one.

Mr. Calder also has a bill in the other place that is similar if not identical to the proposals made by Senator Milne with regard to the secrecy of personal information collected in the course of national census. I want to insist that while I support his initiative for the recognition of the Canadien Horse, I emphatically do not support his initiative to open up personal information collected in the course of census. Anyway, Mr. Calder's bill for the recognition of the Canadien Horse as the national horse of Canada is Bill C-311, for your future reference.

Honourable senators, I would not claim for a moment that interest in this matter and knowledge of it is limited to rural Ontario. Indeed, one of the strongest supporters of this bill — I regret that the honourable senator is not in her seat at this moment — is Senator Fairbairn, whom I hope and expect will be speaking to this bill. As an Albertan, the Honourable Senator Fairbairn is well aware of the role that this animal has played in the development of Western Canada, as well as of the Maritimes and Ontario. I look forward to hearing from the honourable senator on that matter. I had hoped that she might second the motion for second reading today, but perhaps we can leave that until third reading.

Honourable senators, the symbolism is important, but the occasion of this debate and I hope of passage of this bill will also let us focus on the need to maintain the standards of this breed. This preoccupation with standards of the breed is not a new concern for Parliament. It was the subject of a parliamentary discussion in Sir Wilfrid Laurier's day. I have here a March 1909 transcript of the meeting of the Select Standing Committee of the House of Commons on Agriculture and Colonization that dealt with this matter, with the concern that the standards be not diluted in any way. When I resume my speech a bit later, I shall refer to this.

Finally, by way of introduction today, I may say that this issue, like almost every other issue that comes before us, has a federal-provincial component. There has been quite a movement afoot in Quebec to declare this horse as the horse of Quebec. There was a debate on this matter in the National Assembly a while ago; however, I have not taken the time to see with what result.



Let me say that I have no objection whatsoever to Quebec declaring this horse as their equine symbol, if that is what they desire. It is just another thing that Quebec has in common with the rest of the country. However, I do insist that from the very beginning the horse was known as the Canadien Horse. Later, in English, at the parliamentary committee at the turn of the 20th century it was referred to as the French Canadian Horse. Today, it is known again as the Canadien Horse and the breed is the Canadien Breed. Whatever action may have been taken by the National Assembly of Quebec, or whatever its wishes may be in this regard, there is nothing to prevent us from doing what I think we ought to do, which is to recognize this horse as the national horse of Canada.

With those few introductory remarks, honourable senators, now that you know some of the subjects that I will be dealing with at a later date and will have an opportunity to reflect on in the meantime, I will propose the adjournment of the debate.

On motion of Senator Murray, debate adjourned.

### FISHERIES

#### BUDGET AND REQUEST FOR AUTHORITY TO ENGAGE SERVICES AND TRAVEL—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Fisheries (budget—study on the fishing industry) presented in the Senate on May 10, 2001.—(*Honourable Senator Comeau*).

**Hon. Gerald J. Comeau:** I move the adoption of this report.

**The Hon. the Speaker:** It is your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.

### INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

#### FIFTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fifth report of the Standing Committee on Internal Economy, Budgets and Administration (budgets of certain committees—legislation) presented in the Senate on May 10, 2001.—(*Honourable Senator Kroft*).

**Hon. Richard H. Kroft:** I move the adoption of this report.

[*Translation*]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I should like to make it clear that the report is the Report of the Standing Committee on Internal Economy, Budgets and Administration (budgets of

certain committees—legislation). Were these the budgets approved by the subcommittee after the standing committees requested budgets, which subsequently received approval by the Committee on Internal Economy, Budgets and Administration?

[*English*]

**Senator Kroft:** That is correct.

**The Hon. the Speaker:** It is your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.

### INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

#### SIXTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the sixth report of the Standing Committee on Internal Economy, Budgets and Administration (pay scale and terms of employment for unrepresented employees) presented in the Senate on May 10, 2001.—(*Honourable Senator Kroft*).

**Hon. Richard H. Kroft:** I move the adoption of this report.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.

• (1630)

### UNITED STATES NATIONAL MISSILE DEFENCE SYSTEM

#### MOTION RECOMMENDING THAT THE GOVERNMENT NOT SUPPORT DEVELOPMENT—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Roche, seconded by the Honourable Senator Finestone, P.C.:

That the Senate of Canada recommends that the Government of Canada avoid involvement and support for the development of a National Missile Defence (NMD) system that would run counter to the legal obligations enshrined in the Anti-Ballistic Missile Treaty, which has been a cornerstone of strategic stability and an important foundation for international efforts on nuclear disarmament and non-proliferation for almost thirty years;



And on the motion in amendment of the Honourable Senator Finestone, P.C., seconded by the Honourable Senator Bacon, that the subject matter of this motion be referred to the Standing Senate Committee on Defence and Security for study and report back to the Senate.—(*Honourable Senator Kinsella*).

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I should like to make a few comments at this stage. What is before us now, if I understand correctly, is an amendment to the motion of Senator Roche. The motion in amendment brought by Senator Finestone is that the subject matter of Senator Roche's motion be referred to the Standing Senate Committee on Defence and Security for study and to report back to the Senate. I am speaking on the amendment. I take it that I will then have a chance to speak on the main motion to which I had taken the adjournment originally.

Honourable senators, as we all know, today in Ottawa officials from the United States are briefing officials in Canada on the National Missile Defence proposal that is being developed by our friends in the United States.

It has been reported that the Government of Canada is not too sure what the proposal is. The Prime Minister is quoted as saying that he is keeping an open mind toward NMD, but no position has been taken by the Government of Canada.

The Prime Minister was interviewed on this matter as recently as a day ago when he was visiting Atlanta, Georgia, and said that Canadian officials are gathering information. We do seem to have a slippage of position from what the Government of Canada's position originally was, as articulated by the former Minister of Foreign Affairs, Lloyd Axworthy. He opposed such a missile defence system. I think that the policy as articulated by the Prime Minister as recently as yesterday is the prudent one. We should learn more about this proposed system.

The question is this: What would be the best forum in which we in the Senate would be able to make an assessment? Would it be, as Senator Finestone is suggesting, our newly created Standing Senate Committee on Defence and Security or would it be our Standing Senate Committee on Foreign Affairs? We know the terms of reference of both committees, but the Foreign Affairs Committee has a long history of studying issues with specific orders of reference given by the Senate. No order of reference has been given to the new Standing Senate Committee on Defence and Security. I am not sure, on that basis, whether that would be the appropriate committee. There are a number of questions we must answer before we will be in a position to know to which committee would be the most appropriate to refer this matter.

I did not wish to be silent today for fear that it might be interpreted by the officials who are visiting Ottawa today that there is not a serious degree of interest in this issue in the Senate of Canada as far as the opposition is concerned. However, we do

wish to be methodical in our analysis of this matter and in the manner in which we go about such a study.

**Hon. Sheila Finestone:** Honourable senators, I suggest to the Honourable Senator Kinsella that the responsibility of the Standing Senate Committee on Defence and Security extends beyond the strict definitions of "defence" in the general understanding of the term.

In regard to this missile defence system, a tremendous amount of science and technology is involved, as well as research and development. I am uncomfortable with the undertaking, and I do not know if it is realistic. I suggested that we need an ongoing dialogue. I was not sure where that dialogue should take place, but it could well sit under the Defence Committee or the Foreign Affairs Committee.

As the new chairman of the Defence Committee has just been named, and as the chairman of the Foreign Affairs Committee was not available, I chose the Defence Committee. If that is a problem, perhaps we could discuss it. However, what is most important is that we have the dialogue. We need to know where Canada stands, where it would be involved, if it is involved, and the implications if Canada were to walk away from such a plan completely.

I would agree with the Prime Minister that destroying the mass of nuclear weapons is a wonderful and important move toward security and peace on earth.

**The Hon. the Speaker:** I take it that is a comment, which is permitted. Senator Finestone had spoken before.

**Senator Finestone:** I meant it as a question.

**The Hon. the Speaker:** It is a comment on Senator Kinsella's time. He is entitled to respond, if he wishes.

**Senator Finestone:** It was a comment, honourable senators. It does not matter to which committee this matter is referred as long as the issue is studied.

**Hon. Marcel Prud'homme:** Honourable senators, I rise to add my comments to those of Honourable Senator Kinsella and Honourable Senator Finestone.

I was about to become a parliamentarian when some very important American visitors came to Ottawa around 1962. These influential visitors from the United States of America met with the Right Honourable Mr. Pearson and his staff on another issue when I was nearing the end of my studies. Following this visit, honourable senators may recall that in 1963, Canada accepted the placement of nuclear arms.

When I see important visitors from the United States, friendly as they may be, on a matter that is subject to long discussion, I immediately return to the old days where similar visits took place that led us to accept nuclear arms in Canada.

I do not wish to go into that today, but honourable senators will remember that we accepted nuclear arms in order to negotiate them out. That was the way the Liberals decided to handle the situation in 1962. That was the subject of the election in 1963. The Right Honourable Pierre Elliott Trudeau wrote a famous article calling the Right Honourable Lester Pearson "un détroqué de la paix."

The Senate should be the ideal place where no demagoguery takes place. As both of our colleagues have expressed, the question now is: Where would we best study this matter?

Senator Finestone raised this issue first, seconded by Senator Roche. Senator Kinsella now joins with Senator Finestone in asking which committee would be best. This matter should be sent to a committee. I have no objection to this matter being referred to either the Foreign Affairs Committee or the Defence and Security Committee. I would go to either committee.

For 14 years I was Chairman of the Foreign Affairs Committee in the House of Commons and had no problems. I will certainly attend these meetings because they are of great interest for the future. In no way, shape or form is this an anti-American gesture. We are participating in an important worldwide issue.

• (1640)

I will not participate further in the debate on either the amendment or the main motion. Nevertheless, I certainly believe this measure should be sent to a committee, either the one proposed by Senator Finestone or the Foreign Affairs Committee.

It is all very well for the Foreign Affairs Committee to conduct long studies on such matters. I am reminded of when the committee studied the importance of the Asia-Pacific region for Canada. While the committee was conducting that study, Asia collapsed. Do honourable senators remember that?

I like committees to have long-run studies and short-run studies. This one should be a quick and intensive study. If this matter is referred to the Foreign Affairs Committee, the committee could continue with its study of Ukraine and Russia at the same time as studying this matter.

If I were asked for my opinion, I would say that it should go to Senator Rompkey's committee, since it is a new committee. Honourable senators will notice that I did not raise any objections to the formation of new committees, although I am not a member of this new committee.

I thank Senator Finestone for having raised this amendment, as well as Senator Kinsella for having helped us in our reflections.

**Senator Kinsella:** I thank honourable senators for their comments on my intervention.

It seems to me that what has been said helps to underscore the serious question we have before us. Are we more concerned with the strategic military armament dimension? If that were the focus, then, perhaps, the new Senate Committee on Defence and Security would be the more appropriate committee.

However, if our concern is more with international relations, and in particular with the international Anti-Ballistic Missile Treaty, these are issues that, in my view, fall very clearly under the auspices of the Standing Senate Committee on Foreign Affairs. The dimensions of this matter are more in terms of international comity and international peace. This speaks directly to the development of government policy in dealing with this issue, which is very much an international issue. As I have been following the debate as a layperson, many countries seem to be waiting for the other country's move. Russia is waiting to see what this means. To that extent, it seems to fall very much under the rubric of international relations.

Perhaps, honourable senators, it would be helpful if we had a view from the leadership of the government in the Senate as to which committee the government feels would be most appropriate, as well as the terms of reference that we would like the Senate to give whatever committee the matter is referred to.

With all due respect to the motion, I do not think that as currently written it provides a very good, clear, crisp statement of the order of reference that we would give to that committee on such a terribly important issue.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, since Senator Kinsella is asking the government for more details on the amendment, I call for the debate to be adjourned. I agree with all the honourable senators that this is a very important matter. It is a topical issue, and all the more important because a delegation will be coming this week to tell us what the program in question ought to be like.

[English]

**Senator Prud'homme:** Honourable senators, might I add a comment?

**The Hon. the Speaker:** Honourable senators, I was listening to Senator Robichaud. One wants to interpret the rules so as to have as much freedom as possible for exchange in debate. We have a motion, which is not a debatable motion, by Senator Robichaud to adjourn the debate. However, Senator Prud'homme is most anxious to make a comment, I assume, on this motion.

I leave granted, honourable senators, so that Senator Prud'homme can make a comment?

**Hon. Senators:** Agreed.



**Senator Prud'homme:** I thank honourable senators. I am pleased that the Deputy Leader of the Government said that we will have visitors this week. That will give us a chance to prepare the minds of honourable senators to the fact that there will be a very important delegation of 10 Russians from the Duma coming to Ottawa on an official visit on May 28 and 29. They will be presided over by the Speaker. In fact, they will be the guests of both Speakers. There will be a meeting of the Canada-Russia association, at which time it would be ideal to start asking questions.

On motion of Senator Robichaud, debate adjourned.

## STATUS OF LEGAL AID PROGRAM

### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Callbeck calling the attention of the Senate to the status of legal aid in Canada and the difficulties experienced by many low-income Canadians in acquiring adequate legal assistance, for both criminal and civil matters.—(*Honourable Senator Hubley*).

**Hon. Joan Cook:** Honourable senators, I rise today to continue debate on the motion of the Honourable Senator Callbeck concerning legal aid in Canada. Primarily, I will address my remarks on the subject of legal aid in Newfoundland and Labrador as it relates to gender matters.

Legal aid is a provincially administered program, although partially federally funded. Presently, the Legal Aid Commission does not have a policy manual or, indeed, a clear statement of policy. Unwritten policies are understood and implemented differently by individual staff at various offices. This practice causes an inconsistency of service and confusion over exactly what services do exist. It also causes concern among service users and animosity toward individual staff members.

Generally, legal aid will not represent people on child support issues but will on access. Issues of child support relate largely to a woman's need. Access is largely a man's need. Legal aid will not represent a woman who wants to secure a peace bond to help protect herself from her abuser. However, legal aid will provide a lawyer for the abuser to defend himself on criminal charges of spousal abuse.

Legal aid primarily assists people charged with indictable offences. Women are seldom charged with indictable offences. Eighty per cent of women before the courts are one-time offenders, usually charged with a minor offence such as shoplifting. These offences are usually summary conviction offences, and legal aid does not provide representation on

summary conviction offences, except in outstanding circumstances.

Honourable senators, access to the legal aid system is crucial to the enforcement of legal rights. To state the obvious, rights by themselves mean little. It is the ability to enforce them that counts.

• (1650)

In our Canadian legal system, the ability to enforce legal rights usually means being able to hire a lawyer. Women constitute a greater percentage of poor people and therefore have greater need than do men for poverty law services; yet the majority of legal aid clients are male.

Honourable senators, the issues before the court are very different now than they were 30 years ago when legal aid services became available in Newfoundland and Labrador, and legal aid policies and programs have to be adjusted to meet today's legal needs. For instance, family legal aid is becoming increasingly in demand and is required to assist those without resources to leave their marital relationships without compromising their legal rights. While the law permits women to leave abusive relationships or other relationships and the law speaks to their rights in leaving, they have to have access to the law to help them shape the terms of their leaving. However, a person who is trying to leave an abusive situation is less likely to get assistance from legal aid than an abuser is to get legal aid to defend them on criminal charges.

Honourable senators, legal aid will not provide a lawyer to help a person secure child support. Child support is largely a woman's need. Legal aid will provide a lawyer to help a person secure access to their children; access is largely a man's need.

When determining the goals of legal aid, policy-makers should keep in mind that both levels of government have made strong commitments to improving equity and equality. If legal aid policy-makers accept government's leadership, the goals and outcomes for the Legal Aid Program will have to be expanded and clearly articulated to include an acknowledgement of women's legal needs.

Honourable senators, a realignment of legal aid can also result in benefits for men. Gender-based analysis can identify ways in which unquestioned assumptions and values in our laws and policies limit men's choices as well. Some of the disadvantages that women experience are shared by men, and many of the issues that society terms women's issues are, in fact, family, community and society issues. For these reasons, laws and policies that explicitly take women's needs and priorities into account will better meet the needs and concerns of both women and men and result in a better system for us all.

On motion of Senator Hubley, debate adjourned.



[Translation]

## NATIONAL DEFENCE

### QUALITY OF FAMILY LIFE IN THE MILITARY— INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of Senator Cohen, calling the attention of the Senate to the quality of life of the military family and how that quality of life is affected by government actions and by Canadian Forces policy.—(*Honourable Senator Pépin*).

**Hon. Lucie Pépin:** Honourable senators, on April 3, Senator Cohen tabled a report entitled “Unsung Heroes: A Quality-of-Life Perspective on Canada’s Military Families.”

We will recall that this report is the product of a study she made at the Canadian Forces base at Gagetown, New Brunswick. The study was made possible through the cooperation of the wives of the military, officers and soldiers.

During her remarks preceding the tabling of this document, Senator Cohen spoke to us of the need to take action that will enable the members of Canada’s armed forces and their families to enjoy better living conditions. We thank the senator for drawing our attention to this vital question of quality of life in the large community of the Canadian Forces. This is something very closely linked to the revitalization of the morale of our troops.

While it is risky to draw generalizations from the results of this study for the whole of the army, I still share all of Senator Cohen’s concerns. Although the Canadian Forces are successful on such issues as the integration of women into the military, they must also meet equally important challenges related to quality of life and the wellbeing of the military and their families.

It must be recognized that the Canadian Armed Forces have worked to correct certain situations, but they still have several challenges to face. I am told that many things are being put in place to improve the quality of life of Canadian Armed Forces members and their families.

Since 1999, a number of recommendations on the quality of family life in the military were successfully implemented. Moreover, in the “2000-2001 Report on Plans and Priorities,” the Minister of National Defence reiterated his commitment to finish implementing the recommendations made by the Standing Committee on National Defence and Veterans Affairs. We are encouraging them to continue in that direction.

I agree with Senator Cohen that the budget cuts made by the government to reduce the deficit did not help the Canadian armed forces to improve their situation. However, this tough economic period seems to be gradually going away. In 1999 and

2000, the government proceeded with two budget increases. Last year, the Department of National Defence received \$175 million for initiatives relating to the quality of life of military personnel.

This new money gave the Canadian Armed Forces some reprieve and allowed them to refocus on their main objectives, including the improvement of the quality of life of its members and their families.

Today, I should like to discuss some of the issues raised by Senator Cohen. I certainly do not intend to distance myself from the comments made by my colleague, who is asking Parliament and the federal government to find ways to improve the quality of life of Canadian military families. Rather, I want to clarify some points, so that the situation in Gagetown does not lead us to make generalizations.

As Senator Cohen mentioned in May 2000, the Muriel McQueen Fergusson Centre at the University of New Brunswick and Research and Education for Solutions to Violence and Abuse, a research centre at the University of Manitoba, looked at the issue of family violence among military families. This research team, led by Professor Harrison, came to the conclusion that violence against women was a serious problem within Canadian society and that this was also the case within the Canadian Forces community. In an attempt to correct the situation, 51 recommendations were made to Canadian Armed Forces authorities. These recommendations take into account the specific nature of the military environment.

I support these recommendations personally because I feel that violent and abusive treatment of spouses and their children represents an extremely serious problem.

This information on violence concerned me immediately. After getting in touch with the Canadian Armed Forces, I noted that they were not sitting back and doing nothing with respect to this important issue. After making some adjustments, they were very receptive to the recommendations made by Professor Harrison’s task force. These recommendations were incorporated into an action plan on family violence and Mrs. Harrison and military leaders met in the context of a committee formed to eliminate this problem. Follow-up meetings with Mrs. Harrison are planned.

A bilingual brochure about this problem was published in December 2000 by the Director, Military Family Services, in cooperation with Health Canada and with the support of the Canadian Forces Quality of Life Project Team. Note that this educational tool, 40,000 copies of which were distributed free of charge, was well received by the military and civilian communities.

Recently, I was appointed by the Department of National Defence to help prepare an action plan to address the problem of family violence in the Canadian Armed Forces. I undertook to meet with the wives of soldiers and their spouses and to pay sporadic visits in order to note any changes and areas for improvement.

We are not unaware that members of Canada's armed forces face a special situation because of their military service. Enlisting in the army is not just a matter of getting a job. It also involves leaving behind one lifestyle for another which is much more demanding. Canada's armed forces constitute a professional institution which requires its members to serve their country and put the needs of the army ahead of any personal consideration. This state of affairs is made more difficult by the frequent moves and long periods of separation. I will not go back over all the tensions and heartbreak this involves for soldiers and their families. Senator Cohen covered this abundantly in her speech.

• (1700)

The Canadian Armed Forces are aware of the numerous sacrifices required of military families and the difficulties military personnel have in balancing their commitment to their country and their commitment to their family. This is why National Defence has set a priority to policies and programs that focus on improving family life. This will allow military personnel and their families to cope effectively with the demands of military life and have a better equilibrium between it and their family life. The military brass assures us that measures have been taken to reduce the effect of the stress generated by the hectic and sometimes dangerous lives soldiers lead.

The Canadian Forces have set up programs and services focussing on family support and self-help, addressing such areas as economic, social and personal well-being, in order to enhance the quality of life of military personnel and military families. These encompass such things as assistance in finding accommodation suited to their needs, health care and support services for spouses and children. Efforts are being made to foster better understanding between military personnel and their families on the one hand and the local community on the other.

The Canadian Forces acknowledge that its personnel and their families live in unique conditions that can sometimes lead to occupational, personal and emotional concerns. In response, DND and Health Canada's Occupational Health and Safety Agency have established a joint program called the Canadian Forces Member Assistance Program.

This bilingual service provides members and their families with access 24 hours a day, 365 days a year to assistance and support when serious problems arise. These include alcohol or drug abuse, family problems, health problems, work-related problems — such as post-traumatic stress, sexual harassment and aggression, as well as burnout — or any other issue requiring urgent help. Those who are eligible can not only obtain immediate assistance over the phone, but also meet with a counsellor. From discussions with Senator Cohen and Professor Harrison, however, it would appear that there are still some accessibility problems to be ironed out.

The Canadian Forces also put something else at the disposal of families to help them. I refer to the Military Family Services Program. This program was established in 1991.

The local military family resource centres are the major achievements of this program. The 43 centres are governed by a board of directors elected by the community. The civilian wives of the military must account for at least 51 per cent of the membership. Each council works in association with the local commander to meet the needs of the Canadian Forces families in the region. Each centre is unique and must be able to help victims of mistreatment confidentially and direct them to community resources.

Senator Cohen said that some people were not satisfied with the services provided under this program. On the basis of this finding, I will go with the members of the action plan to look into the situation and see if there have been improvements. We will see whether, in spite of all the resources provided, the military has to review the operation of these centres.

Senator Cohen could, perhaps, accompany me in this. The involvement of the partners of the military is not limited to the local resource centres. They are also found on the Military Family National Advisory Board.

This board serves as a forum for the major concerns of the families and ensures there are mechanisms in place to take note of their concerns.

The Canadian Forces have recently examined their parental and maternity policies in order to meet the standards of contemporary society. As a result of this examination, changes have been made to bring parental maternity benefits available to members of the Canadian Forces in line with those already enjoyed by federal public servants.

Since April 1, 1999, each military family resource centre is required to hire a child care coordinator. These coordinators maintain links with the community and provide better care options in order to help the growing number of single-parent families.

There is no denying that the difficulties encountered by soldiers and their families have an impact on their children. The Canadian Armed Forces are aware of this and organized a National Youth Summit, from August 23 to 26, 1999. This summit gave young people an opportunity to recommend initiatives that should help them.

Honourable senators, there are many other very important issues which I would like to come back to — issues of salary, housing, the frequent moves, bilingualism, the posting process, spousal employment counselling — but unfortunately time does not permit. However, I should like to take this up again.



Honourable senators, I recognize that soldiers have their work cut out for them, but I can tell you that it is not for lack of good will. On the contrary. The military hierarchy's drive for perfection, its way of reacting to situations, and its policy must be adapted to our civilian world. Soldiers want everything to run well and everyone to be happy, for there to be no violence and for families to adjust to often incongruous situations. They devote a great deal of energy and discipline to this end. However, they realize that they need help in getting the changes needed to bridge the gap between civilian and military life adopted harmoniously.

We must support them. There is no miracle solution, particularly when it comes to an issue as far-reaching as the quality of life of those in the military. I am certain that the new Standing Committee on Defence and Security, of which I am a member, will ensure that it addresses the problems of military families effectively. I thank Senator Cohen and Professor Harrison for having drawn our attention to these very important difficulties. And I congratulate the Canadian Armed Forces on their positive reaction. I would add, however, that this is not the end, but just the beginning.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):**

Honourable senators, I should like to ask a question of Senator P  pin. She spoke of confidentiality in connection with the various programs that have been developed, particularly the social and family assistance programs. Is a military career liable to be jeopardized if an employee or family member seeks

assistance from one of these programs? Will the principle of confidentiality be respected?

**Senator P  pin:** This is an excellent question, because it is indeed a problem. DND wives tell us that they would like to make use of the services, but are reluctant to do so because they wonder what effect this might have on their husbands' careers. Even if it is clearly understood that any interventions are to remain confidential, it is not yet clearly understood in the Canadian Forces that certain things ought to remain confidential so as not to bring them into conflict with the military career. The military aspect should be kept completely separate. That is a problem at this time.

• (1710)

I must say that they showed good will by saying that they wanted to correct the situation. However, they are still operating like military people, which makes it very difficult to get them to accept some of the ways used by civilians to do things. This is where the problem lies. This is a major problem right now, because whether it is relying on social services for children or other issues, everything is recorded on the soldier's file. This situation must be corrected and we hope that we can get along and understand each other.

On motion of Senator Robichaud, for Senator Wilson, debate adjourned.

The Senate adjourned until Wednesday, May 16, 2001, at 1:30 p.m.



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CANADA

# Debates of the Senate

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37th PARLIAMENT

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OFFICIAL REPORT  
(HANSARD)

Wednesday, May 16, 2001

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THE HONOURABLE DAN HAYS  
SPEAKER



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## THE SENATE

Wednesday, May 16, 2001

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

[Translation]

### ROUTINE PROCEEDINGS

#### ADJOURNMENT

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Thursday, May 17, 2001, at 1:30 p.m.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

#### IMPERIAL LIFE ASSURANCE COMPANY OF CANADA

##### PRIVATE BILL—PRESENTATION OF PETITION

**Hon. Serge Joyal:** Honourable senators, I have the honour to present a petition from the Imperial Life Assurance Company of Canada, of the city of Toronto, in the province of Ontario, praying for the passage of an Act authorizing it to apply to be continued as a corporation under the laws of the Province of Quebec.

#### CERTAS DIRECT ASSURANCE COMPANY

##### PRIVATE BILL—PRESENTATION OF PETITION

**Hon. Serge Joyal:** Honourable senators, I have the honour to present a petition from the Certas Direct Assurance Company, of the city of Mississauga, in the province of Ontario, praying for the passage of an Act authorizing it to apply to be continued as a corporation under the laws of the Province of Quebec.

[English]

#### BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, we are out of order. We have dealt with Presentation of Petitions. Perhaps leave could be requested to change the order because Senator Joyal was recognized under the wrong heading, namely Reading of Petitions for Private Bills. That confusion occurs at times.

Is leave granted, honourable senators, to have heard that item under Presentation of Petitions?

**Hon. Senators:** Agreed.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, as a matter of clarification, we are taking the item just dealt with as if it had appeared under Presentation of Petitions. Therefore, tomorrow we will expect to hear His Honour call Reading of Petitions for Private Bills on the same subject.

**The Hon. the Speaker:** That is correct, Senator Kinsella.

#### STUDY ON STATE OF FEDERAL GOVERNMENT POLICY ON PRESERVATION AND PROMOTION OF CANADIAN DISTINCTIVENESS

##### BUDGET AND REQUEST FOR AUTHORITY TO ENGAGE SERVICES—REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE PRESENTED

Leave having been given to revert to Presentation of Report from Standing or Special Committees:

**Hon. Michael Kirby,** Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Wednesday, May 16, 2001

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

#### SIXTH REPORT

Your Committee, which was authorized by the Senate on Tuesday, April 24th, 2001, to examine and report upon the state of federal government policy relating to the preservation and promotion of a sense of community at the national level in Canada, respectfully requests that it be empowered to engage the services of such counsel as technical, clerical and other personnel as may be necessary for the purpose of such study.

Pursuant to section 2:07 of the Procedural Guidelines for the Financial Operation of Senate Committees, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of the Committee are appended to this report.

Respectfully submitted,

MICHAEL KIRBY  
Chair

(For text of report, see today's Journals of the Senate, p. 571)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Kirby, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

• (1340)

## SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF DEVELOPMENTS IN THE FIELD OF PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS

**Hon. Michael Kirby:** Honourable senators, I give notice that on Thursday next, May 17, 2001, I will move:

That notwithstanding the Order of the Senate adopted on March 1, 2001, the Standing Senate Committee on Social Affairs, Science and Technology, which was authorized to examine and report upon the developments since Royal Assent was given during the Second Session of the Thirty-sixth Parliament to Bill C-6, an Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act, be empowered to present its final report no later than December 31, 2001.

## QUESTION PERIOD

### NATIONAL DEFENCE

#### REPLACEMENT OF SEA KING HELICOPTERS—AVAILABILITY OF INTERFACE CONTROL SPECIFICATIONS

**Hon. J. Michael Forrestall:** Honourable senators, my question for the Leader of the Government has to do with the Maritime Helicopter Project Web site. Today, the project Web site indicates that the basic vehicle and integrated mission systems for the maritime helicopter specification will be ready in May of 2001.

Can the minister tell us when the interface control specification will be ready? Why is it not mentioned on the Web site? Could that be because it is only in draft form and not yet generally approved?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator not only for

his question but also for providing me with copies, since it is a technical matter he has laid before the Senate this afternoon.

I cannot give the honourable senator a satisfactory answer at this time as to whether there will be an interface control specification and, if there is, when it will be ready and why it has not been mentioned on the Web site.

**Senator Forrestall:** I appreciate very much the technicalities involved, but I do not apologize for them. I trust all senators will recognize their importance to this project.

#### REPLACEMENT OF SEA KING HELICOPTERS—POSSIBLE WITHDRAWAL OF EUROCOPTER FROM COMPETITION

**Hon. J. Michael Forrestall:** As a supplementary, honourable senators, I have been informed that unless the requirement specification for the basic vehicle is reduced, Eurocopter has threatened to withdraw from the process. Can the minister tell the chamber whether there will be reductions in the basic vehicle requirement specifications for the Maritime Helicopter Project requirement specification published just last fall?

**Hon. Sharon Carstairs (Leader of the Government):** This is a somewhat disturbing question, not from the honourable senator, but from what it implies on the part of Eurocopter. Its threat to withdraw unless the requirement of the basic vehicle is reduced should give everyone some concern with respect to how that particular company is interfacing with the Government of Canada. To my knowledge, there will be no reduction in the basic vehicle requirement from the maritime helicopter requirement that was published last fall.

#### REPLACEMENT OF SEA KING HELICOPTERS—BRIEFING OF LEADER OF THE GOVERNMENT ON COMPETITION

**Hon. J. Michael Forrestall:** I appreciate that answer very much. The honourable leader will appreciate the concern that many of us will have and already have about the changing nature of the original requests. Could the minister tell the chamber — I think it is important and I do not ask this question in a trivial way at all — if she has had the benefit in the last few weeks of a briefing by the Department of National Defence on the helicopter project? If she has not, and I know how busy she is with ministerial duties as well as with duties here in the Senate, would she arrange for an in-depth briefing? We are getting close to a critical point in time in determining whether we will see a replacement now or whether the whole matter will be delayed by one if not two years.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, let me be clear. I have not received a briefing from the Department of National Defence on the Maritime Helicopter Project in the last number of weeks. Staff, in response to questions the honourable senator has placed before the chamber, have been receiving ongoing information from the Department of National Defence.



I can tell the honourable senator that I spoke with the Minister of National Defence yesterday. I urged once again for this decision to be made sooner rather than later because I know it is of great concern to the honourable senator. It is also of great concern to the forces generally.

### IMMIGRATION AND REFUGEE BOARD

#### APPOINTMENTS—REQUEST FOR COPY OF TESTS FOR PROSPECTIVE BOARD MEMBERS

**Hon. Marjory LeBreton:** Honourable senators, on Tuesday, May 1, I asked a question of the Leader of the Government in the Senate about appointments to the Immigration Refugee Board and the procedures by which these appointments were made. The leader replied, as one would expect her to, that they were based on competence. She replied that individuals are tested, to which I then responded by asking if she would be good enough to provide the guidelines and the testing.

Yesterday, in a delayed answer to that question, I received a long response about procedures followed, including the fact that a Ministerial Advisory Committee is set up to assist the minister in appointing these people. When it came to the portion on written tests, the answer simply stated:

Candidates who have been screened in are invited to a written test.

Can the honourable leader provide the names of the people who serve on the Ministerial Advisory Committee? As well, can she provide the actual test required of the people who wish to serve on this board so that we can see exactly what the test is all about?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I find the latter part of the question extremely strange. If you are going to test people, my experience as a teacher is that you do not give out the test in advance. If you do, then everyone can score 100 per cent if they take the time to study the area. That is not the purpose of trying to find out from students whether they have been studying on a regular basis and whether they have achieved a knowledge base.

Whether that particular test can be made available publicly, I would have to suggest that I do not know, but I would think not. I do not think that would be in the best interests of obtaining good scores.

I can tell my honourable friend, however, that the failure rate on this test is about 70 per cent. The test involves not only the screening to which the honourable senator made reference but also the written test, an oral examination and reference checks.

**Senator LeBreton:** That is the most arrogant answer I have heard in a long time. The fact is that we are asking these people

to deal with the serious matter of people coming to this country. The board members are in charge of whether refugees are accepted or rejected. As a former teacher, the Leader of the Government says that tests are not given out in advance. With a Ministerial Advisory Committee suggesting candidates for the board, surely those candidates are required to answer questions that are not written at the last minute, or is the honourable leader saying that the test is written to suit the applicants? There is obviously some type of test that is provided to these people, one that does not require great secrecy.

• (1350)

**Senator Carstairs:** The honourable senator is asking that the test be made public. If the test is made public, then presumably everyone, whether competent or not, could study up on their little handbook and get 100 per cent. I would assume that the testing is meant to evaluate how a person might deal with a case using judgment skills, but I do not think that any agency would want to distribute the test ahead of time. I do not consider that arrogance. I consider it common sense.

**Senator LeBreton:** Honourable senators, for a little bit of common sense, perhaps the leader can give us an answer that is more than one paragraph long. Surely the government has and can provide to this side of the chamber the type or line of questioning without getting into the exact questions that might be asked of people who are to serve in these very sensitive positions, which happen to be very well-paid positions, I might add. To say that somehow or other we would give the test out in advance and give people a leg up is nonsense. If they have gone through the whole screening process, surely it is not too much to ask what type of questions they are required to answer in order to obtain this very high-paying government position.

**Senator Carstairs:** Honourable senators, we have now moved to another field. We no longer want the exam questions. We want to know what the textbook is. If there is a textbook available to all participants in the pre-examination period, then we will try to obtain the same for the honourable senator.

**Senator LeBreton:** The honourable senator claims that 70 per cent of the people failed the test. Obviously she must have some sense of what the test involves. If the leader is afraid of revealing a test that may give a leg up to future candidates, perhaps she can give us a copy of a test that was failed by candidates in the past.

**Senator Carstairs:** Honourable senators, I have tried to be very clear with the honourable senator. About seventy per cent of the people who have taken the test have failed the test. That is the result of the statistical analysis done by the agency that administers the testing of these candidates. If there is a basic manual stating that candidates should prepare in a certain way in terms of the overall exam questions, then I will try to obtain that for the honourable senator. It is highly unlikely that I will get the questions themselves.



## FINANCE

SOURCES OF GOVERNMENT SURPLUS—  
PROJECT EXPENDITURES

**Hon. Terry Stratton:** Honourable senators, my question is addressed to the Leader of the Government in the Senate. It appears that, yesterday, the Prime Minister jumped the gun on the Finance Minister by announcing there would be a \$15-billion surplus this year. Can she confirm whether or not that is true, and where does the money come from?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the Prime Minister, to quote the aide to the Finance Minister "is a very well-informed guy." I think one can take the Prime Minister's word for the fact that, tomorrow, there will be an announcement by the Finance Minister and that, included in that announcement, will be a \$15-billion payment to be made on the national debt.

**Some Hon. Senators:** Hear, hear!

**Senator Stratton:** It is wonderful to see the opposite side cheering. There was one important question that I added as a tag-on: Where does the \$15 billion come from? I should like to know the answer to that.

**Senator Carstairs:** Honourable senators, it comes from the very efficient operation of this government.

**Senator Stratton:** Honourable senators, it is wonderful to see a sense of humour on the other side. Unfortunately, the real answer to the question is the current \$42-billion surplus in the EI fund, and growing to \$50 billion. When I started asking this question, the surplus was \$12 billion. Now it will hit \$50 billion. That is where the \$15 billion comes from.

Honourable senators, I also read, much to my astonishment, that the legacy of the Prime Minister will be a \$200-million boondoggle, which will be accomplished by blowing up Metcalfe Street, widening it into a vista, just taking away historic buildings and tearing down office buildings and interrupting commerce. All of that will be done so the Prime Minister can leave the legacy of a vista. Is that project really going ahead?

**Senator Carstairs:** Honourable senators, the person who should be asked that question is not the Prime Minister but the Chair of the National Capital Commission who will lay out, I understand, sometime in the near future the vision of his commission for the future of the national capital area.

**Senator Stratton:** Honourable senators, there has to be a concern about this kind of spending. There was also another announcement just yesterday for another museum costing some \$210 million. I am not arguing whether the project is right or wrong. My concern is that we appear to be travelling down the road to spending. We know of this project and the \$200 million

for a wonderful vista down Metcalfe Street. We know that when we start this kind of thing, this legacy-leaving, it can grow like the gun-control bill that grew from \$85 million to \$485 million. We know that that one project will probably grow from \$200 million to \$500 million.

We are now spending money in the EI surplus, which is approaching \$50 billion. My question is: When will this kind of spending stop? When will the government give credit where credit is due, not cheer and applaud themselves but give credit to the Canadian taxpayer who is paying into the \$40-billion to \$50-billion surplus in the EI fund, to which the government has no right.

**Senator Carstairs:** Honourable senators, the taxpayers of Canada seem to be very pleased with the economic plans that have been laid out by the Finance Minister. I am sure they will be equally pleased tomorrow with the plans he will lay before the people of Canada in his economic update. I certainly am pleased that the national debt will now be reduced to the level of about 1986. That, combined with the deficits that we have not been experiencing the past few years, is why the Canadian people choose to elect Liberal governments.

**Senator Stratton:** It is a surtax on the Canadian people.

## JUSTICE

## IDENTIFICATION REGISTRY ON PEDOPHILE SEX OFFENDERS

**Hon. Joyce Fairbairn:** Honourable senators, I will address a question to the Leader of the Government in the Senate. Yesterday, I spoke in this chamber about the tragic murder of five-year-old Jessica Koopmans in my hometown of Lethbridge, Alberta. Once the family lays their daughter to rest, in the next two days, the focus will shift, as it has for the police force already, to the apprehension of the person who committed this deplorable crime.

Yesterday the Premier of Alberta, Ralph Klein, indicated that he was asking his Solicitor General to review, in the next two weeks, the possibility of setting up a register in that province for pedophile sex offenders to give police forces the best possible opportunity to prevent these situations from occurring.

● (1400)

I should like to ask the Leader of the Government in the Senate the position of the federal government on this issue. I know that other provinces have expressed an interest in this subject. The Province of Ontario has its own registry. However, through the Canadian Police Information Centre or other methods, is the federal government focusing and consulting with its provincial colleagues on the most effective and efficient way to handle what is an issue of deep concern and emotion across this country?

**Hon. Sharon Carstairs (Leader of the Government):** All honourable senators join with the Koopmans family in sorrow at the loss of Jessica. No one believes that our children will die before we die. It is particularly difficult when we lose one so young as Jessica.

The safety of children is a concern to each and every one of us. That is why we have a national registry of all criminal convictions. It is called CPIC. Included in that registry is the list of all sex offenders. The government is open to improvements and has engaged and will continue to engage in discussions with partners across the country, including provinces and territories, as well as police forces throughout the country, to ensure that CPIC's sex offender registry is the best that it can be.

**Senator Fairbairn:** I thank the leader for that answer. In the present federal system, one of the concerns of provinces and others is not just to know who these people are but to identify where they are. This has been discussed between some provinces and the federal government. Could the Leader of the Government in the Senate give us an indication of the federal response to the identification of the whereabouts of these sexual offenders?

**Senator Carstairs:** One of the difficulties in knowing the whereabouts of a criminal is that it is dependent upon the criminal to inform the police authorities where he or she may have moved. The registry rate of criminals is not terribly effective. If they are interested in committing additional crimes, they do not necessarily inform the police authorities of where they are at any given time.

Coupled with privacy concerns, which we have spoken about in some detail in this chamber in the past, as well as Charter concerns, there is the issue of whether a great deal of money should be spent on something that will be ineffective.

Having said that, the federal government will continue to work with authorities throughout the country to ensure that CPIC is the most effective means of dealing with sex offenders in the country.

**Senator Fairbairn:** When the addresses are available, whether through the offender or other police forces, they will be available and posted within that CPIC network. I would agree with the Leader of the Government in the Senate that the CPIC registry is certainly among the finest registries of the countries with which we deal.

**Senator Carstairs:** As the honourable senator has indicated, CPIC is a first-class system. It is reputed to be one of the best in the world. That does not mean, however, that we should not continue to make it better if it is possible to make it better.

We should also recognize that, as a government, we have identified a number of other issues. There is now a national screening system to help childcare agencies screen potential volunteers as well as employees. We have put a system in place

to ensure that the records of even pardoned sex offenders are available for screening purposes.

The government has passed one of the toughest child pornography laws in the world. We have lengthened sentences for dangerous offenders and long-term sex offenders. All of these things go a long way to ensuring the safety of our children.

[Translation]

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw to your attention the presence in the gallery of members of the Fédération Canada-France, who are with us on the occasion of the Journée Canada-France, organized by the Association interparlementaire Canada-France. Welcome to the Senate of Canada.

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table a delayed answer to the question raised by Senator Spivak on March 29, 2001, on the use of high risk animal tissues in the food chain.

## HEALTH

### USE OF HIGH RISK ANIMAL TISSUES IN FOOD CHAIN

(Response to question raised by Hon. Mira Spivak on March 29, 2001)

As the Honourable Mira Spivak stated on March 29, it is true that the European Union has issued a directive to its member countries banning the use of specified risk materials, such as brain and spinal cords from the food chain. The reasons for the ban are the result of the confirmation of bovine spongiform encephalopathy (BSE or mad cow disease) in some of the cattle herds in most of its member countries.

Unlike many EU countries, Canada has not diagnosed BSE in our native born cattle. Canada is recognized as free from BSE by the *International Office of Epizootics* (OIE), the international animal health standard setting body. Since 1989, the Canadian government has implemented a number of measures in order to prevent the introduction of BSE into Canada, to maintain an active surveillance of the Canadian cattle herd for the detection of BSE, and to prevent the transmission of BSE from animal products to other animals or to humans. All of these actions were taken to protect human and animal health in Canada.



In the Canadian domestic situation, the absence of BSE in Canadian cattle means that there is a significant difference in risk from that in Europe where BSE has been identified in cattle. As a result, the potential presence of the infective agent in central nervous system (brain and spinal cord), eyes and the lymph system is different than in Canada. However, given the commitment to appropriate stewardship, estimating the risk in Canada rather than relying on interpretation of theoretical risk is important. Therefore, Health Canada is currently conducting a scientific risk assessment on the use of the subject tissues from domestic cattle. This risk assessment will form the scientific basis for decisions regarding the use of these tissues in Canada.

A risk assessment encompasses a comprehensive scrutinization of peer-reviewed scientific evidence which is available worldwide in the scientific literature. The assessment may be qualitative or quantitative in nature depending on the information available. A risk assessment involves the identification of a hazard, characterization of the hazard, including dose response, identification of the level of exposure to the hazard and finally characterization of the risk based on the above. Where it is necessary to interpret the data through the application of assumptions, the level of uncertainty associated with those assumptions is documented within the risk assessment process.

## ORDERS OF THE DAY

### ILLEGAL DRUGS

#### BUDGET AND REQUEST FOR AUTHORITY TO ENGAGE SERVICES AND TRAVEL—REPORT OF SPECIAL COMMITTEE ADOPTED

The Senate proceeded to consideration of the first report of the Senate Special Committee on Illegal Drugs (*budget*), presented to the Senate May 10, 2001.—(*Honourable Senator Nolin*).

**Hon. Pierre Claude Nolin** moved the adoption of the report.

Motion agreed to and report adopted.

• (1410)

### OFFICIAL LANGUAGES

#### SECOND REPORT OF JOINT COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Joint Committee on Official Languages entitled "The Broadcasting and Availability of the Debates and Proceedings of Parliament in both Official Languages,"

presented in the Senate on May 2, 2001.—(*Honourable Senator Maheu*).

**Hon. Shirley Maheu:** Honourable senators, the Standing Joint Committee on Official Languages, which I co-chair with Mauril Bélanger, a member of Parliament, undertook a study on the broadcasting and availability of the debates and proceedings of Parliament in both official languages.

Many complaints were filed with the Commissioner of Official Languages regarding the unavailability of the debates of the House of Commons in either official language. We asked the main stakeholders to appear before our committee and our report, which was presented to Parliament, summed up the situation. Following the investigation report by the Commissioner of Official Languages, one of the complainants decided to take his case before the courts.

The committee wishes to point out that its mandate was not to look into these complaints, but to generally study the broadcasting of the debates and proceedings of Parliament in both official languages.

In order to fully understand the issue, representatives of four institutions appeared before the committee regarding the broadcasting of the debates and proceedings of Parliament in both official languages. They are the Commissioner of Official Languages, Dyane Adam; the Speaker of the House of Commons, the Honourable Peter Milliken; the Chairman of the Board of the Cable Public Affairs Channel or CPAC, Ken Stein, and its General Manager, Colette Watson; and the Executive Director of the Canadian Radio-Television and Telecommunications Commission or the CRTC, Jean-Pierre Blais.

[*English*]

From 1979 to 1991, the Canadian Broadcasting Corporation rebroadcast television coverage of the debates of the House of Commons by satellite to all cable companies across the country. In April 1992, as a result of budget cuts, the CBC announced that it wanted to terminate its commitment. That same year, a consortium of cable companies, Cable Public Affairs Channel, was formed and took over from the CBC. A few months later, CPAC reached an interim agreement with the House of Commons Board of Internal Economy and in 1994 the two parties signed a formal seven-year agreement that will expire on August 31, 2001.

[*Translation*]

Under the agreement, the House of Commons undertakes to broadcast directly to CPAC a video signal and three audio signals of the debates and proceedings of the House, one from the floor, one in English and one in French. For its part, CPAC will make the video signal and the three audio signals of the debates and proceedings of Parliament available in both official languages to the cable distributors who are members of its consortium.



[English]

The issue before the committee is one of distribution in English and French by the cable companies rather than of the availability of audio signals in both official languages. Cable companies that are not in any way bound by the agreement between the House of Commons and CPAC may choose to broadcast only one of the three audio signals retransmitted via satellite by CPAC.

It is important to add that the cable companies are not required to broadcast CPAC. If they choose to do so, it is understood that CPAC is required to be part of the basic service offered to subscribers.

[Translation]

Because of the limited number of channels available in analog mode, it would seem that very few cable distributors choose to offer their viewers the French and English versions of CPAC. As a result, unilingual television viewers, francophones or anglophones, are not able to understand the debates and proceedings of Parliament which are not broadcast in their language.

At the meeting, Ms Watson undertook to make SAP technology available to a greater number of cable distributors, approximately 80 per cent within the next year. She also stressed the need to make the Canadian public more aware of SAP technology.

[English]

The committee also considered the question of subtitling in both official languages. For the moment, subtitling of debates by the House broadcasting service is available only in English, and in simultaneous French sign language, or LSQ. These two versions are incorporated in the broadcasting signal transmitted by the House broadcasting service. It should be noted that subtitling is available only during Question Period.

[Translation]

With respect to the availability of closed-captioning in French, Ms Watson, of CPAC, indicated that the problem was the responsibility of the House of Commons and had to do with the recruitment of qualified French-speaking personnel. Following an in-depth analysis of the problem of rebroadcasting the debates and proceedings of the House of Commons, the committee made seven recommendations as follows:

[English]

It is the committee's view that under section 133 of the Constitution Act, 1867, section 16 of the Constitution Act, 1982 and sections 4, 22 and 25 of the Official Languages Act, Parliament is required to ensure that its debates and proceedings are broadcast across Canada in both official languages.

The committee finds it necessary that subscribers already receiving the CPAC signal be able to access Parliamentary debates and proceedings in their preferred official language.

[ Senator Maheu ]

First, the committee recommends to the CRTC that it require cable companies to broadcast the debates and proceedings of Parliament in both official languages.

Second, the committee recommends that CPAC's commitment on installation of the infrastructure permitting cable companies to adopt SAP technology be made an integral part of the agreement now under negotiation between the House of Commons and CPAC.

Third, the committee requests that CRTC and CPAC take the necessary steps to make SAP technology better known to cable subscribers as soon as possible.

Fourth, the committee recommends to the Board of Internal Economy of the House of Commons that it conclude an interim agreement with CPAC until CPAC's licence renewal by the CRTC, scheduled for August 2002.

Fifth, the committee recommends the term of the next agreement between the House of Commons and CPAC not exceed five years.

Sixth, the committee recommends to Parliament that it take the necessary steps to produce subtitling in French for Question Period in the House of Commons without delay.

Seventh, the committee recommends to Parliament that it take the necessary steps to make subtitling available in both official languages when the proceedings of Senate committees are televised.

[Translation]

In conclusion, the committee wishes to reiterate the importance of making broadcasts of the debates and proceedings of Parliament available in the official language of the public's choice. It fervently hopes that stakeholders see the need to arrive at a solution.

[English]

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and report adopted.

• (1420)

## STATE OF HEALTH CARE SYSTEM

REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY  
COMMITTEE ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Kirby, seconded by the Honourable Senator Poulter for the adoption of the second report (interim) of the Standing Senate Committee on Social Affairs, Science and Technology entitled: *The Health of Canadians — The Federal Role, Volume One: The Story So Far*, tabled in the Senate on March 28, 2001.—(Honourable Senator Milne).

**Hon. Lorna Milne:** Honourable senators, I took adjournment of the debate on the interim second report of the Standing Senate Committee on Social Affairs, Science and Technology because I wanted to have an opportunity to read the report. I merely wish to tell the Senate that I have read the report and I think it is excellent.

**The Hon. the Speaker:** If no other senators wish to speak, is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.

BUDGET AND REQUEST FOR AUTHORITY TO ENGAGE  
SERVICES—REPORT OF SOCIAL AFFAIRS, SCIENCE AND  
TECHNOLOGY COMMITTEE ADOPTED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Social Affairs, Science and Technology (budget—special study on health care system) presented in the Senate on April 24, 2001.—(*Honourable Senator Kirby*).

**Hon. Michael Kirby** moved the adoption of the report.

Motion agreed to and report adopted.

## THE NATIONAL ANTHEM

### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Poy calling the attention of the Senate to the national anthem.—(*Honourable Senator Pearson*).

**Hon. Lois M. Wilson:** Honourable senators, I wish to make a few comments on Senator Poy's inquiry concerning the national anthem.

In 1980, Canada's national anthem was proclaimed the official national anthem by statute, namely, the National Anthem Act. This means that it is now subject to amendment in the same manner as any other regular statute.

On March 15, 1967, under the Right Honourable Lester B. Pearson, a special joint committee "unanimously recommended that the government further study the lyrics." It discarded the otherwise acceptable bilingual version as being difficult for other ethnic groups in Canada to accept. It accepted keeping the original French version and using the Weir English version with minor changes.

I was recently speaking with Geoffrey Pearson, son of Lester B. B. He told me that he thought he remembered his father acting to rid the national anthem of a couple of "We stand on guard" phrases. I checked this out. Sure enough, in 1967, the special joint committee under Lester B. Pearson replaced two of the "stand on guard" phrases with "from far and wide" and "God

keep our land." This reduced the oft-repeated phrase "We stand on guard" from five to three, which is more in keeping with a Canada that does not need its citizens to be constantly standing on guard to the exclusion of all else. I still have some trouble remembering these phrases, as I am used to the "stand on guard" phrase from when I was a child. Hurrah for Lester B. Pearson's government!

On June 27, 1980, in the debate on the bill — Bill C-26 as it was then — the Honourable Francis Fox said:

Madam Speaker, a number of members on both sides of the House have expressed concern over some of the wording of the version recommended by the 1968 Joint Committee of the House and the Senate. The Minister of State for Multiculturalism, members on this side of the House and, I am sure, on the other side of the House among all parties feel that some of the wording should be changed. Many would like to see the words "sons" and "native land" replaced — in the case of "native land" by "cherished land" — to better reflect the reality of Canada. In the course of the next session the Government would be more than willing to see the subject matter of a private member's bill on this question.

Unfortunately, as Senator Poy noted, all subsequent attempts at amendment proved unsuccessful. Although the legal mechanism for amendment is clear, there appears to be a lack of political will.

However, the national anthem's lyrics are not set in stone. I therefore support the intent of Senator Poy's inquiry: to look carefully at the wording of the anthem in the current context of gender equality in Canada. Some dismiss this as a frivolous matter and are unwilling to acknowledge that language shapes and informs thought and action. I am not of that school and therefore think the matter worthy of some consideration. I support Senator Poy's initiative in bringing the matter to our attention.

On motion of Senator Robichaud, for Senator Pearson, debate adjourned.

[Translation]

## FRENCH-LANGUAGE BROADCASTING SERVICE

### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Gauthier calling the attention of the Senate to the measures that should be taken to encourage and facilitate provision of and access to the widest possible range of French-language broadcasting services in francophone minority communities across Canada.—(*Honourable Senator Kinsella*).



**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, on March 29 last, Senator Gauthier spoke to his inquiry calling our attention to the measures that should be taken to encourage and facilitate provision of and access to the widest possible range of French-language broadcasting services in francophone minority communities across Canada. This is a very important matter.

I must begin by pointing out that the Broadcasting Act indicates very clearly that the Canadian broadcasting system must serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada. Application of the various provisions of that act is entrusted to the federal government, and in particular to the Canadian Radio and Telecommunications Commission — the CRTC.

In 1996, honourable senators, the date of the last census — since honourable senators are aware that the latest one was only taken yesterday — close to 9 million Canadians had a knowledge of French, or close to 30 per cent of the total population of this country. Of that number, I must point out that over 311,000 of that number lived in New Brunswick, the only officially bilingual province, and over a million in Ontario. It is clear, therefore, that the French-language broadcasting market does not target solely the needs of Quebecers, but also those of sizeable minority communities throughout Canada. In addition, it provides English Canadians and members of other cultural communities with a vibrant display of the vitality of the French Canadian community, as well as a unique opportunity to learn one of the country's official languages.

Honourable senators, the presence of the francophone media, and of francophone television and radio in particular, has a crucial role to play in the survival and development of the language and culture of this country's francophone minorities. They make it possible to bring together, indeed to unite, members of this minority by allowing them to express and disseminate the aspirations that are theirs alone.

In this context, application of the objectives and provisions of the Broadcasting Act is more necessary than ever. Over the past ten years, the world of Canadian television has experienced tremendous changes. We have seen the appearance of digital television, the Internet and the expansion of satellite television.

• (1430)

This little revolution in the world of telecommunications took place with the blessings of the CRTC. Yet it is of great concern to the francophone minority communities, particularly those in my province of New Brunswick.

The representatives of the Société des Acadiens et des Acadiennes du Nouveau-Brunswick (SAANB) are categorical on this. In their brief submitted to the CRTC at its hearing on

October 10, 2000 on French-language broadcast services to minority communities, the Société stated as follows:

The development of the New Brunswick Acadian community, like all other Francophone communities in this country, is closely tied to the power such communities exercise over the media.

Honourable senators, the Acadian community — the community of my maternal grandmother — has demonstrated on more than one occasion its ability to take charge and to do innovative things in the field of broadcasting. Today, thanks to the experience of numerous local producers and the efforts of the Acadians, there are more than four private radio stations and seven community-type stations broadcasting in French. The situation is, however, not as bright when it comes to access to national public and private networks. Acadians, like all other francophone minority communities in the country, have to be constantly battling the cable companies, the CRTC and even the French network of the CBC — the SRC — to ensure their rights are being respected.

In this regard, the claims of the Acadian community are numerous. For example, it is still impossible to broadcast the signal for Radio-Canada's FM cultural network to Northwestern New Brunswick and the provincial capital, Fredericton, for lack of funds. In addition, when it appeared before the CRTC, the SAANB criticized the fact that productions of the major French-language radio and television networks did not actively contribute to the cultural expression of minority Acadian and francophone communities. In other provinces, with the exception of the National Capital Region, access to French-language broadcasting service is very limited. In the name of cost-effectiveness, French-language national and speciality channels are often not positioned as well as the American channels. Sometimes they are not even among the channels carried by the cable companies.

Honourable senators, we may well wonder whether the CRTC is properly performing its role of defender of the Canadian identity and the linguistic duality. To improve its image, the commission therefore released a report on February 12, 2001 on the accessibility of French-language broadcasting service. It also contained over 200 recommendations to improve the delivery of these services outside Quebec. The aim of the report is, among others, to respond to the concerns of the Acadian community of New Brunswick.

Initially, the CRTC proposes a series of measures for the cable industry and Radio-Canada to increase the number of francophone radio and television networks outside Quebec. Then, it recommends that the SRC offer more regional productions in its programming in order to better reflect the needs and realities of francophone minority communities.



Under the Broadcasting Act, the programming of the SRC, as the national public broadcaster, must be designed so as to reflect the situation and specific needs of both official language communities, including the minority communities of each. The CRTC, in its recommendations, has set itself the task of reminding the heads of Radio-Canada of this fact. However, the commission subtly avoided addressing the issue of the funding of the implementation of the solutions it proposes.

Honourable senators, let us not forget that the CBC is a Crown corporation that is primarily funded by the federal government. In 1993, the Liberals, who then formed the opposition, did not hesitate to accuse the Progressive Conservative government of having seriously jeopardized Canadian cultural identity with its cuts to the CBC budget. It was said in the first red book that a Liberal government would provide this Crown corporation with stable, multi-year funding. However, once in office, did the Liberals fare better than the Conservatives?

In his 1995 budget, the Minister of Finance, Paul Martin, made cuts in excess of \$400 million to the CBC's budget. Services to francophone minority communities were hit very hard.

In an interview given to the newspaper *L'Acadie nouvelle*, the President of the Crown corporation, Robert Rabinovitch, said the following, on March 15:

The cuts began in 1984, but the most major ones occurred in 1995, when a \$1 billion subsidy was reduced by \$400 million. That was almost a 40 per cent loss. It goes without saying that a 40 per cent loss means that cuts have to be made everywhere, in every region and program.

About one year ago, Mr. Rabinovitch made the following statement to the daily *The Ottawa Citizen*, and I quote:

[English]

If CBC were a private-sector company...it would be on its way to bankruptcy.

[Translation]

Even with the assurance of stable funding in the 1998 budget, both the French and the English network of the CBC are still feeling the effects of the decision made by the Liberals in 1995. In spite of these budget cuts, the CBC had to continue to produce information, entertainment and cultural programs in both official languages to fulfil its mandate. To make up for the lack of funding, it had to increase its advertising revenues, at the expense of the quality of its programming. Since 1994, the CBC has eliminated over 4,000 jobs.

Honourable senators, I will conclude by reminding my dear Liberal colleagues that section 43 of the Official Languages Act provides that the federal government must take all necessary measures to promote the development of francophone and anglophone minorities in Canada. Unfortunately, even though the CRTC report makes no mention of that, it demonstrates once

again how, since 1993, the Liberals have failed miserably to promote Canada's linguistic duality.

• (1440)

A few months ago, the Minister of Canadian Heritage, Sheila Copps, used Bill C-55 to launch a crusade against American magazines. However, she and her government were not opposed to the multiplication of American television channels. This probably explains why the response of the association for the defence of the rights of francophones outside Quebec to the CRTC report was lukewarm. The needs are many, but the odds are that the promises made with respect to the CRTC in the January 6 Speech from the Throne and the \$60 million in funding to that body on May 2 will fall well short of meeting the expectations of Canada's Acadians and francophones.

On motion of Senator Losier-Cool, debate adjourned.

## CABLE PUBLIC AFFAIRS CHANNEL

CLOSED-CAPTIONING SERVICE—INQUIRY—  
DEBATE ADJOURNED

**Hon. Jean-Robert Gauthier** rose pursuant to notice of March 1, 2001:

That he will call the attention of the Senate to the current negotiations on the renewal of the broadcasting agreement between the Senate and CPAC, the Cable Public Affairs Channel, to ensure that they include the closed-captioning of parliamentary debates authorized for television and that the renewal of this agreement reflect the commitments made by CPAC on services for the hearing-impaired.

He said: Honourable senators, the Cable Public Affairs Channel was recently studied by the Standing Joint Committee on Official Languages. The committee devoted four or five meetings to the issue, which concerned the House of Commons in particular.

As things now stand, the television or video signal is accompanied by three audio channels: the floor, which is the language spoken by a member during parliamentary debates; an English signal, which can be a translation of the language used by a member; and a French signal, which can also be a translation of the signal broadcast by the floor channel.

The cable companies are not required to provide the video plus an audio signal. It is up to them to choose the signal they want to send their customers.

You need only read the committee's report tabled last week to understand the business is not easily resolved. On the one hand, the cable companies say the House of Commons sends them the signal and they distribute it. Canadians who are not happy, for example, those in the Maritimes who do not understand the language used and broadcast, say they are entitled to hear the comments of their MPs, and they are right.

Two or three complaints were lodged by people from the Maritimes. The Commissioner of Official Languages, on inquiry, considered the issue required some corrective action. Accordingly, the question was put to the Standing Joint Committee on Official Languages, which sought a solution. I think we have found it.

It is possible today to have video accompanied by sound in one or other of the country's two official languages. With modern systems, equipment less than ten years old, the sound may be changed. It is possible to have what is called an SAP, a secondary audio program. It is simply a matter of pressing a button, and you have the audio signal in the language of your choice.

CPAC, which received the signal from the House, transmitted it to cable companies that perhaps did not have the equipment permitting the language switch, the audio switch. Accordingly, Canadians did not get parliamentary debate service.

I was somewhat annoyed by the position of the Canadian Alliance Party. The report tabled earlier today by Senator Maheu alludes to it. There is a dissenting report on CPAC. They basically say that section 133 provides that parliamentary debates and documents must be available to Quebec, New Brunswick and Manitoba in both official languages. It is simple.

The Canadian Alliance Party argues that in 1867, there was no mention of television or radio. There was no requirement to transmit a signal in French and in English. Therefore, they claim that this is not provided in the Constitution of the country. Of course there was no television in 1867, and probably no radio either. I find it totally inappropriate on the part of a political party, moreover, the country's official opposition, to say that it is appropriate not to broadcast parliamentary debates in both official languages, because it is not in the Constitution. I do not think any senator could argue that section 133 does not apply to television or radio in the same way as it applies to written documents we receive in both official languages. Personally, I think that the Canadian Alliance Party is way off in its supposedly vigilant report.

CPAC sends a video signal in both official languages, in French and in English, as well as the floor signal. Today, we have access to the debates of Parliament in both official languages. It was even announced that the signal would be extended west of Ontario. Therefore, it will soon be possible to get a video signal in both official languages right across the country.

• (1450)

It strikes me as a great solution. We did a good job. I might perhaps have wanted to speak to the report, as I gave notice of my intention to do so in March.

Honourable senators, I should like the Senate to innovate with respect to the parliamentary debates issue. Right now, we have a contract with CPAC which will shortly be renewed, guaranteeing CPAC eight hours of televised committee hearings. I hope that an

additional service will be considered when the licence is renewed: closed-captioning in either of the official languages. We have the technological and human resources to do this.

I am deaf. I depend on a computer and a guardian angel to interpret what is going on. Thanks to my guardian angel, I can understand everything and follow the proceedings.

There are hundreds of thousands of Canadians who watch television, who are 70 years of age and older, and who are hearing-impaired. They could easily read the debate if closed-captioning were provided. The Senate could take the initiative and send a signal to CPAC accompanied by the appropriate closed-captioning. We have the resources to do this, whereas the House of Commons does not. They discontinued this approximately ten years ago. Honourable senators, I urge you to seriously consider introducing a closed-captioning service for meetings of Senate committees now available.

On motion of Senator Kroft, debate adjourned.

[English]

## THE SENATE

### MOTION ON PROPOSED CHANGE TO RULE 90— DEBATE ADJOURNED

**Hon. Jean-Robert Gauthier**, pursuant to notice of March 13, 2001, moved:

That the *Rules of the Senate* be amended, by adding after Rule 90, the following new Rule:

90.1 Within 90 days of the presentation of a report from a select committee, the government shall, upon the request of the committee, table a comprehensive response thereto.

He said: Honourable senators, adoption of this motion would be an important step in the right direction. That is to say it would make it necessary that the work of the Senate be followed up by the government.

Today in the Senate we adopted three or four reports of committees. What will happen to those reports? Nothing, except for a disposition saying that the Senate agreed to the motions and adopted the reports.

I should like to make it a practice that when the Senate adopts a report, the Senate sends a message to the government stating that we want them to give us a comprehensive answer to that report. In that way, we will know the government's reaction to it, whether it be positive or negative. It is important. In a sense, that is what is done in the House of Commons. If the committee so wishes, the government has to give an answer to any committee report adopted by the House, a comprehensive answer.

[*Translation*]

It seems fairly straightforward to me. I received a communication from Senator Lynch-Staunton on this subject in which he makes a very good suggestion. Instead of saying, as the motion does "the presentation of a report from a select committee," we could add "the adoption of the report by the Senate," which is much stronger. The government could be invited to table a comprehensive response to the report. This would be constructive and helpful. I see no reason not to do so. I am merely making a suggestion. My purpose is entirely justifiable.

[*English*]

**Hon. John Lynch-Staunton (Leader of the Opposition):**

Honourable senators, I was not prepared to speak to this motion today. Tomorrow, I should like to follow up on what Senator Gauthier has said and move an amendment to his motion which I think will meet with the agreement of all senators.

On motion of Senator Lynch-Staunton, debate adjourned.

The Senate adjourned until Thursday, May 17, 2001, at 1:30 p.m.





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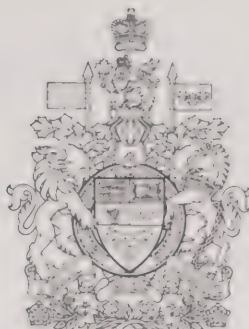








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CANADA

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OFFICIAL REPORT  
(HANSARD)

Thursday, May 17, 2001

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THE HONOURABLE DAN HAYS  
SPEAKER





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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Thursday, May 17, 2001

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### MR. GULZAR CHEEMA

##### CONGRATULATIONS ON ELECTORAL VICTORY

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I rise today to congratulate a former colleague of mine for his election victory yesterday in the British Columbia riding of Surrey-Panorama Ridge. Gulzar Cheema was elected as part of the new Liberal government in that province, with a resounding 58 per cent of the vote. Gulzar is a doctor by profession.

This is not the first time Dr. Cheema has held elected office. He served as the opposition health care critic under my leadership in the Manitoba legislature. He was first elected in Manitoba in 1988 and again in 1990. In 1993, he and his family moved to British Columbia to be with other family members, most particularly his parents who had come over from India.

Dr. Cheema brings with him a sense of conviction and commitment, which will greatly benefit those he represents. The people in Surrey-Panorama Ridge have elected a person who will work tirelessly on their behalf and will stand by his values.

To quote Gulzar:

You can become a citizen of a country and then a public servant. That's a privilege. So I must honour the privilege by making the most of this opportunity.

I congratulate Gulzar, Premier-elect Gordon Campbell, and the rest of those who were elected yesterday. I wish them the very best of luck.

#### SHUTDOWN OF CAPE BRETON DEVELOPMENT CORPORATION

**Hon. Lowell Murray:** Honourable senators, yesterday, the government announced that the Prince coal mine in Cape Breton will close this fall. Another 440 Cape Bretoners will be unemployed. This is the end of coal mining under the federal Crown agency known as the Cape Breton Development Corporation.

Perhaps, as the government suggests, this was inevitable. Perhaps there was no alternative. Perhaps, but how would we know? Parliament has been kept in the dark.

Last June, we passed Bill C-11 to authorize the government to privatize Devco. At the Senate committee, we all had serious reservations about handing over to the cabinet the authority to dispose of this Crown corporation without any provision for parliamentary oversight, let alone approval. We stated in our report that we would review the terms of any sale. We intended to recall the minister for this purpose.

A curtain of silence and secrecy was then brought down on Devco. The public was informed that negotiations with one prospective buyer, then another, had failed. Then, yesterday Mr. Goodale flew into Cape Breton for his photo-op to announce that the government was giving up. Still, not a word to Parliament, which in 1967, on the initiative of the Pearson government, created Devco.

Who is calling the government to account, to defend its actions and to outline its future intentions? Every time a mine closes, the government announces another top-up to an economic development fund. There are more direct ways of creating jobs and ensuring economic stability.

When the Mulroney government closed the Canadian Forces base in Summerside, Prince Edward Island, we put a GST centre there and an industrial park. We took similar steps in Chatham New Brunswick, and other parts of the country.

The present government has it within its power to relocate federal agencies to Cape Breton. Two rookie Liberal MPs elected last fall, will not call the government to account. They are silent in the interests of caucus solidarity.

As the last of the coal miners trudge out of the pits to an uncertain future, they do not even have the satisfaction of knowing that the government will have to answer to Parliament for what it has done.

Wherever you come from, honourable senators should know that the way in which this painful human experience is happening is directly related to the dysfunction of our parliamentary institutions. Having demonstrated yet again its contempt for Parliament, the government should not be surprised to find Canadians despairing of the institution.

Is there a committee of the Senate willing to take this on? wonder.



[Translation]

## OFFICIAL LANGUAGES

### ISSUES FACING COMMISSIONER

**Hon. Jean-Robert Gauthier:** Honourable senators, Dyane Adam, the Commissioner of Official Languages, has asked the Quebec Superior Court to intervene in the court challenge by 19 municipalities of Quebec's Bill 171, which relates to their merger into a mega-city, "Montreal, one island, one city."

Honourable senators must be aware that, like her predecessors, the Commissioner of Official Languages is often called on to appear in court to defend the rights of official language minorities when they are being threatened. This is her role, her duty even.

Yesterday, Ms Adam and the Office of the Commissioner of Official Languages intervened in Toronto before an Ontario court in the Montfort case. As honourable senators are aware, this relates to the Ontario government's decision to close the only French-language teaching hospital in Ontario.

She is also an intervener in Moncton, New Brunswick at this time, in connection with the delivery of French-language services by the municipality.

Quebec Premier Landry is scandalized at what he calls "Commissioner Adam's interference in an area of provincial jurisdiction."

He would like to put a wall, or a moat, around Quebec, around what he calls the Quebec nation. You are wrong, Mr. Landry. We know he is out to stir up trouble. He asks:

Do I send Quebec's Deputy Minister of Finance to interfere in Ontario's finances?

Really now, Mr. Landry! How about explaining to the French Canadians of Alberta, and elsewhere, why Quebec was opposed in the courts to French-only schools in Alberta?

Incidentally, it is not the federal government that is intervening in the municipal mergers, including in Montreal. It is an officer of Parliament, not of the government. The Commissioner of Official Languages is appointed by the Parliament of Canada. She is not a senior public servant, as Mr. Landry would have it. She is a language ombudsman with the mandate of defending official language minority communities. Her mandate is to intervene when the linguistic duality of the country is threatened.

• (1340)

Just like she was justified in supporting the Montfort Hospital, Ms Adam is justified in defending the rights of Quebec's anglophone minority. It is the same thing when she must make Ontario's anglophone majority understand that it is unfair to close the only hospital in Ontario where French is the working

language. I should point out that Montfort Hospital provides services in both official languages to its patients.

Ms Adam is absolutely right to defend Quebec's anglophone minority. She must protect and preserve rights that have been held for over 134 years. This is what Canada is all about, Mr. Landry.

A former Premier of Quebec coined the following sentence:

Quebec must be as French as Ontario is English.

The only problem with this statement is that the provinces must respect the linguistic rights held by official languages minorities.

Talk about a double standard. Come on Mr. Landry! One country, Canada, and two official languages, no more, but no less.

[English]

## PRO-DEMOCRACY MOVEMENT OF SOUTH KOREA

### TWENTY-FIRST ANNIVERSARY

**Hon. Lois M. Wilson:** Honourable senators, tomorrow, May 18, marks the twenty-first anniversary of the pro-democracy movement in South Korea under the leadership of current President Kim Dae Jung. It continues to be a significant historic event for that country and for Canada's relationships with it.

After the division of the Korean Peninsula, the people of that country experienced a variety of regimes, including two brutal dictatorships. Over the years, university students took the lead in restoring democracy to their troubled country, many paying for it with their lives. On May 18, 1980, a massacre of students in the provincial city of Kwang-ju galvanized Korean citizens. The incredible agony and courage of students in those days turned the tide to eventually depose the dictatorships and establish a democratic regime.

Canadian parliamentarians have a special place in that history. In November 1980, current President Kim Dae Jung was in prison and under death sentence for being in the forefront of leadership of the pro-democracy movement. In the Canadian House of Commons, Bill Clarke, a sitting member from Vancouver, said:

I move that the House express its serious concern over the action of the military court in sentencing to death Kim Dae Jung, and that this House implore President Chun to use his ultimate executive power to secure the release of Mr. Kim.

The motion passed unanimously and after Canadian government intervention, Kim Dae Jung was released. The story has some parallels to that of Nelson Mandela.

Honourable senators, I speak to this matter today to illustrate the importance of international solidarity among parliamentarians of democratic countries. Supporting South Korea currently, and its Sunshine Policy toward the Democratic Peoples Republic of Korea, the Canadian government announced diplomatic relationships with the DPRK on February 6 this year. On the occasion of remembering the history of this troubled peninsula, we look for an exchange of parliamentarians with the DPRK at an early date. This would contribute greatly to the beginning of democracy in that so-called rogue state.

### DISTINGUISHED VISITOR IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw to your attention the presence in the gallery of a former senator, former Minister of Agriculture and former member of the House of Commons, the Honourable Eugene Whelan.

**Hon. Senators:** Hear, hear!

### PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

**The Hon. the Speaker:** Honourable senators, I should like to introduce the pages who are our guests from the House of Commons.

[Translation]

Richard Linley is studying political science at the University of Ottawa. He is a native of Stratford, Ontario.

[English]

Daniel McBryde is studying history in the Faculty of Arts at the University of Ottawa. Daniel is from Quebec City.

Amelia Fink of Regina, Saskatchewan, is pursuing her studies in the Faculty of Public Affairs and Management at Carleton University. Her major is European and Russian studies.

Welcome to you all.

**Hon. Senators:** Hear, hear!

[Earlier]

## ROUTINE PROCEEDINGS

### CHIEF ELECTORAL OFFICER

#### ANNUAL REPORT TABLED

**The Hon. the Speaker:** Honourable senators, I have the honour to table the report of the Chief Electoral Officer for the fiscal year ended March 31, 2001, pursuant to the Privacy Act.

[ Senator Wilson ]

## PRIVILEGES, STANDING RULES AND ORDERS

### BUDGET AND REQUEST FOR AUTHORITY TO TRAVEL—THIRD REPORT OF COMMITTEE PRESENTED

**Hon. Jack Austin,** Chair of the Standing Committee on Privileges, Standing Rules and Orders, presented the following report:

Thursday, May 17, 2001

The Standing Committee on Privileges, Standing Rules and Orders has the honour to present its

### THIRD REPORT

Your Committee, which is authorised by the Senate pursuant to Rule 86(1)(f), to propose amendments to the rules for consideration by the Senate, respectfully requests that it be empowered to adjourn from place to place within and outside Canada.

Pursuant to Section 2:07 of the Procedural Guidelines for the Financial Operations of Senate Committees, the Budget submitted to the Standing Committee on Internal Economy Budgets and Administration and the report of said Committee are appended to this report.

Respectfully submitted,

JACK AUSTIN, P.C.  
Chair

(For text of report, see today's Journals of the Senate, p. 591.)

**The Hon. the Speaker:** Honourable senator, when shall this report be taken into consideration?

On motion of Senator Austin, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

## CUSTOMS ACT

### BILL TO AMEND—REPORT OF COMMITTEE

**Hon. Lowell Murray,** Chairman of the Standing Senate Committee on National Finance, presented the following report:

Thursday, May 17, 2001

The Standing Senate Committee on National Finance has the honour to present its

### FIFTH REPORT

Your Committee, to which was referred Bill S-23, An Act to amend the Customs Act and to make related amendments to other Acts, has, in obedience to the Order of Reference of Thursday, May 3, 2001, examined the said Bill and now reports the same with the following amendments:



1. *Page 6, Clause 11:* Add after line 32, the following:

**“11.2** (1) The Minister may designate an area as a customs controlled area for the purposes of this section and sections 11.3 to 11.5 and 99.2 and 99.3.

(2) The Minister may amend, cancel or reinstate at any time a designation made under this section.

**11.3** No owner or operator of a facility where a customs controlled area is located shall grant or allow to be granted access to the customs controlled area to any person unless the person

(a) has been authorized by the Minister in accordance with regulations made under section 11.5; or

(b) is a prescribed person or a member of a prescribed class of persons.

**11.4** (1) Subject to subsection (2), every person leaving a customs controlled area, other than for the purpose of boarding a flight with a destination outside Canada, shall

(a) present himself or herself in the prescribed manner to an officer and identify himself or herself;

(b) report in the prescribed manner and make *available* to the officer any goods that he or she has acquired through any means while in the customs controlled area; and

(c) answer truthfully any questions asked by an officer in the performance of his or her duties under this or any other Act of Parliament.

(2) Subsection (1) does not apply to

(a) persons who are required to present themselves under section 11 or report goods under section 12; or

(b) prescribed persons or members of prescribed classes of persons in prescribed circumstances.

**11.5** The Governor in Council may make regulations

(a) respecting the authorization of persons under paragraph 11.3(a);

(b) prescribing persons or classes of persons who may be granted access under paragraph 11.3(b);

(c) respecting the circumstances in which an authorization under paragraph 11.3(a) may be amended, suspended, renewed, cancelled or reinstated;

(d) respecting the manner in which a person must present himself or herself under paragraph 11.4(1)(a) and report goods under paragraph 11.4(1)(b); and

(e) prescribing for the purposes of paragraph 11.4(2)(b) persons or classes of persons who are exempt from the requirements imposed by subsection 11.4(1) and the circumstances in which they are exempted.”.

2. *Page 8, clause 17:* Replace, in the French version, line 33 with the following:

“et qui doit faire la”.

3. *Page 34, clause 58:* Replace, in the French version,

a) lines 16 and 17 with the following:

“(13) Les renseignements qui ne peuvent être communiqués en raison du paragraphe (11) ne peuvent, à”;

(b) line 24 with the following:

“ve ou réglementaire ou la règle de pratique exigeant la communica-”; and

(c) line 28 with the following:

“à une disposition législative ou réglementaire ou la règle de pratique”.

4. *Page 44, clause 58:* Replace, in the French version, line 6 with the following:

“la décision de cette cour ou, en cas de”.

5. *Page 65, clause 59:* Replace lines 41 and 42 with the following:

“accordance with article RE 601 of the *Letter Post Regulations* of the Universal Postal”.

6. *Page 66, clause 60:* Replace, in the French version, line 12 with the following:

“(b)examiner les marchandises qu’elle a impor-”.

7. *Page 66, clause 60:* Add after line 16 the following:

**99.2** (1) An officer may search any person leaving a customs controlled area, other than a prescribed person or a member of a prescribed class of persons who may be searched under subsection (2), if the officer suspects on reasonable grounds that the person has secreted on or about their person anything in respect of which this Act or the regulations have been or might be contravened, anything that would afford evidence with respect to a contravention of this Act or the regulations or any goods the importation or exportation of which is prohibited, controlled or regulated under this or any other Act of Parliament.



(2) An officer may, in accordance with the regulations, search any prescribed person or member of a prescribed class of persons leaving a customs controlled area.

(3) An officer who is about to search a person under this section shall, on the request of the person, immediately take that person before the senior officer at the place where the search is to be conducted.

(4) A senior officer before whom a person is taken by an officer shall, if the senior officer agrees with the officer that under subsection (1) or (2), as the case may be, the person may be searched, direct that the person be searched or, if the senior officer does not so agree, discharge the person.

(5) No person may be searched by an officer who is not of the same sex and, if there is no officer of the same sex at the place at which the search is to be conducted, an officer may authorize any suitable person of the same sex to conduct the search.

**99.3** (1) An officer may, in accordance with the regulations and without individualized suspicion, conduct a non-intrusive examination of goods in the custody or possession of a person leaving a customs controlled area.

(2) An officer may examine any goods in the custody or possession of a person leaving a customs controlled area and open or cause to be opened any baggage, package or container and take samples of the goods in reasonable amounts, if the officer suspects on reasonable grounds that this Act or any other Act of Parliament administered or enforced by the officer or any regulations made under it have been or might be contravened in respect of the goods.

(3) An officer may, at any time, open or cause to be opened, inspect and detain any baggage, package or container found abandoned in a customs controlled area.

**99.4** The Governor in Council may make regulations

(a) prescribing persons or classes of persons who may be searched under subsection 99.2(2);

(b) respecting, for the purposes of subsection 99.2(2), the circumstances and manner in which searches are to be conducted and the types of searches that may be conducted; and

(c) respecting, for the purposes of subsection 99.3(1), the manner in which examinations are to be conducted and the machines, instruments, devices or other apparatuses or classes of machines, instruments, devices or apparatuses that may be used to conduct examinations.”.

8. *Page 69, clause 61:* Replace, in the English version,

(a) lines 5 and 6 with the following:

“investigate an alleged offence under any Act of Parliament or of the legislature of a province subject to”;

(b) lines 10 and 11 with the following:

“respect of the alleged offence may be taken, if the official believes on reasonable grounds”;

(c) line 13 with the following:

“offence and will be used in the”;

(d) line 15 with the following:

“offence, solely for those purposes”; and

(e) lines 30 and 31 with the following:

“(ii) a person whom that official has reasonable grounds to believe may have committed an”.

9. *Page 78, clause 68:* Replace lines 11 to 14 with the following:

“section 110, cancel or reduce a penalty assessed under section 109.3 or an amount demanded under section 12 or refund an amount received under any of sections 117 to 119 within”.

10. *Pages 85 and 86, clause 77:* Replace lines 40 to 4 on page 85 and lines 1 to 9 on page 86 with the following

**“77. Section 141 of the Act is replaced by the following:**

**141.** (1) The Commissioner, on application by a person whose interest in a conveyance detained under subsection 97.25(2) or in goods or a conveyance seized as forfeit under this Act has been determined under section 139 or ordered under section 139.1 or 140 to be unaffected by the seizure or detention, shall direct that

(a) in the case of goods or a conveyance the forfeiture of which has become final, the goods or conveyance, at the case may be, be given to the applicant; and

(b) in the case of a conveyance detained under subsection 97.25(2), the conveyance be given to the applicant.

(1.1) If goods or a conveyance that is to be given to the applicant has been sold or disposed of, an amount calculated on the basis of the interest of the applicant in the goods or conveyance at the time of the contravention or use, as determined under section 139 or ordered under section 139.1 or 140, shall be paid to the applicant.

(2) The total amount paid under subsection (1.1) in respect of goods or a conveyance shall, if the goods or conveyance was sold or otherwise disposed of under this Act, not exceed the proceeds of the sale or disposition, if any, less any costs incurred by Her Majesty in respect of the goods or conveyance, and, if there are no proceeds of disposition, no payment shall be made pursuant to subsection (1.1)."

11. *Pages 90, clause 88:* Replace line 34 with the following:

"taux déterminé, calculés sur les".

Respectfully submitted,

LOWELL MURRAY  
*Chairman*

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Murray, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

## STUDY OF CHIEF ELECTORAL OFFICER'S REPORT ON THE THIRTY-SEVENTH GENERAL ELECTION

REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS  
COMMITTEE TABLED

**Hon. Lorna Milne:** Honourable senators, I have the honour to table the fourth report of the Standing Senate Committee on Legal and Constitutional Affairs which deals with the Chief Electoral Officer's report for 2000 on the thirty-seventh general election held November 27, 2001.

## JUDGES ACT

BILL TO AMEND—REPORT OF COMMITTEE

**Hon. Lorna Milne,** Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, May 17, 2001

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

## FIFTH REPORT

Your Committee, to which was referred Bill C-12, An Act to amend the Judges Act and to amend another Act in consequence, has, in obedience to the Order of Reference of May 9, 2001, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

LORNA MILNE  
*Chair*

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Milne, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

[Translation]

## IMPERIAL LIFE ASSURANCE COMPANY OF CANADA

PRIVATE BILL—FIRST READING

**Hon. Serge Joyal:** Honourable senators, I have the honour to present Bill S-27, to authorize the Imperial Life Assurance Company of Canada to apply to be continued as a company under the laws of the Province of Quebec.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Joyal, bill placed on the Orders of the Day for second reading on May 29, 2001.

## CERTAS DIRECT INSURANCE COMPANY

PRIVATE BILL—FIRST READING

**Hon. Serge Joyal:** Honourable senators, I have the honour to present Bill S-28, to authorize Certas Direct Insurance Company to apply to be continued as a company under the laws of the Province of Quebec.

Bill read the first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Joyal, bill placed on the Orders of the Day for second reading on Tuesday, May 29, 2001.

[English]

• (1350)

## QUESTION PERIOD

### NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS—POSSIBLE CHANGE TO  
BASIC VEHICLE REQUIREMENTS—EFFECT ON  
INVOLVEMENT OF EUROCOPTER

**Hon. J. Michael Forrestall:** Honourable senators, my question is directed to the Leader of the Government in the Senate. She will recall that yesterday I had asked specifically if the new basic vehicle requirement specification would be or had been changed to suit Eurocopter. I asked the question because I had heard Eurocopter was very concerned and, indeed, were claiming that the standards were too high.



I have reviewed the requirement specification for the basic vehicle, and the standards may have been lowered. Endurance or the length of time the helicopter must stay airborne has been changed from the Maritime helicopter requirement specification of two hours and 50 minutes, plus a 30-minute reserve, to two hours and 20 minutes, plus a 30-minute reserve.

If analysis indicates that this is a reduction, if the requirement has in fact been changed, might I ask if it was done to accommodate Eurocopter?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, Senator Forrestall has asked a very interesting question. It is also a very specific one. I thank him again for sending me a copy of the question earlier. I must say to the honourable senator that I do not know whether an ISA 15 standard or an ISA 20 standard are, in fact, two different terms or whether the timing would be changed accordingly.

However, as I indicated to the honourable senator yesterday, I will look into whether the specification has been changed. I will get that information for him as quickly as possible.

**Senator Forrestall:** Honourable senators, I have in my possession a chart from the 1999 statement of requirements for the Maritime helicopter. It states that two hours and 20 minutes for hot weather operations borders between high and moderate risk of failure. Maritime helicopter with limited endurance of two hours and 20 minutes would fail at its missions 50 per cent of the time. Why was this requirement lowered, if not for Eurocopter? There is no other reason that comes to mind or that I have been able to unearth for such a dramatic change.

**Senator Carstairs:** Honourable senators, Senator Forrestall in his original question, and I repeat his words, said, "standards may have been lowered." What I have agreed to do this afternoon is to examine with staff and the Department of National Defence whether those specifications have indeed been lowered, and any reasons for such a lowering.

#### REPLACEMENT OF SEA KING HELICOPTERS—BRIEFING OF LEADER OF THE GOVERNMENT ON COMPETITION

**Hon. J. Michael Forrestall:** Honourable senators, could I conclude by asking whether the Leader of the Government in the Senate — and I know of her concern in this regard — will now take the initiative and ensure that the department give her a full and adequate briefing with respect to these matters?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senator, I had discussions with staff this morning. It was agreed that a contact call should be made to see if there is any updated information over what I had earlier been given.

#### REPLACEMENT OF SEA KING HELICOPTERS—LOCATION OF EUROCOPTER BUSINESS OPERATIONS

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I rise on a supplementary question. The buying of helicopters is not an everyday occurrence. Listening to the series of questions raised by the Honourable Senator Forrestall, I was trying to understand some of the dimensions of these inquiries.

What are the politics of this matter? Where are Eurocopter's bases of interest in Canada? Is it not true that Eurocopter and its family of companies is located in the area that is represented by the Deputy Prime Minister?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not have at my fingertips the location of Eurocopter. However, I can assure the honourable senator that decisions about the Maritime Helicopter Project are not based on whose constituency the particular company happens to be located in, even if that constituency is that of the Deputy Prime Minister.

**Senator Forrestall:** Want to bet?

**Senator Kinsella:** I thank the honourable senator for her answer. I know that the minister will be first to defend that principle.

• (1400)

#### REPLACEMENT OF SEA KING HELICOPTERS—POSSIBLE CHANGE TO BASIC VEHICLE REQUIREMENTS—EFFECT ON INVOLVEMENT OF EUROCOPTER

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, there appears to be a change in the statement of requirements put out through the bid process. There is a reduction in the standard in terms of endurance, how long these helicopters can stay in the air. In 1967, the Sea King that we are replacing had an endurance of some three hours. The endurance of these new helicopters, according to the statement of requirements, as I understand it, has been reduced to two hours and twenty minutes, which is less than what the Sea Kings were. This reduction seems to be occurring because Eurocopter cannot fly for three hours. Perhaps the minister could give us some assurance that the reduction in flying time is not being done to favour Eurocopter.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, we have adjusted our "may" to a "has," and that is unfortunate. Even Senator Forrestall in his question was very careful to say "the standard may have changed." We do not know if it has changed. I will try to get to the bottom of that, and I hope to have an answer by the time we are back after the break.



## JUSTICE

OFFICIAL LANGUAGES—COURT ACTION BY COMMISSIONER  
INVOLVING QUEBEC BILL 171—INTERVENTION BY FEDERAL  
GOVERNMENT

**Hon. Jean-Robert Gauthier:** Honourable senators, my question is addressed to the Leader of the Government in the Senate. It concerns an issue I raised during Senators' Statements. The papers today inform us that there is a war between Ms Dyane Adam, the Official Languages Commissioner, and Mr. Bernard Landry, the Premier of Quebec, regarding Ms Adam's request to the courts in Quebec to be heard on this question of Bill 171. I wanted to ask the minister if she would inquire of the Minister of Justice whether the federal government will ask to intervene in this case before the courts so that we know exactly where we stand on this issue. The question is simple: Will the Minister of Justice take action to defend the constitutional rights of the English-speaking minority? Section 16.3 of our Charter of Rights and Freedoms is clear. Will the minister inquire of the Minister of Justice and bring to the house some information on the matter?

[Translation]

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his question. The mandate of the Commissioner of Official Languages includes promoting French and English throughout Canadian society.

[English]

That has to be clear. The mandate of the Official Languages Commissioner is equally strong in the province of Quebec as it is in every other province and territory of this country.

As to the specifics of the question, I will put it to the Minister of Justice and try to get back to the honourable senator as quickly as possible.

## FOREIGN AFFAIRS

UNITED STATES—MISSILE DEFENCE SYSTEM—AVAILABILITY OF  
BRIEFING PAPERS DESCRIBING PROPOSAL

**Hon. Douglas Roche:** Honourable senators, my question is directed to the Leader of the Government in the Senate.

As is well known, a U.S. team discussed with Canadian officials this week the proposed U.S. missile defence system, and the Canadian government is reserving its position pending further study.

Did the U.S. team leave any written material with the Canadian officials? If so, can the minister make that material available to the Senate so that senators can also study what is

being proposed in this matter of overarching importance in U.S.-Canada relations?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, we know that the meeting was held. We know that discussions took place. Whether paper was transferred from one side to the other, I have no knowledge. Whether that paper is confidential, I have no knowledge. However, I will inquire as to both aspects of that question.

**Senator Roche:** Honourable senators, I thank the minister for her undertaking to inquire. If there is material, I hope the documents will be released in the spirit to which the Prime Minister referred in the House of Commons on May 15, when he said that the briefings given by the Canadian officials following the meetings with the U.S. officials should be made available to parliamentarians as well as to the public, so there can be an informed debate in our country before the government takes this decision. I thank the minister and I ask her to come back to me on this point, if she would.

UNITED STATES—MISSILE DEFENCE SYSTEM—CONSULTATIONS  
WITH INTERNATIONAL ORGANIZATIONS  
AND OTHER COUNTRIES

**Hon. Douglas Roche:** Does the government plan to hold consultations with other countries that will be affected by the U.S. plans? I have in mind our NATO allies in Europe and also Russia and China. The views of all these countries are extremely important. Is Canada searching them out?

**Hon. Sharon Carstairs (Leader of the Government):** The Government of Canada has been clear. It wants to know the positions of other countries with respect to ballistic missile defence, which has been proposed in very preliminary form by the United States. We all have to bear in mind that it is, at the present time, in very preliminary form. Clearly, it is a good indication of our relationship with the United States that that kind of consultation is taking place at the beginning of the process and not down the road after decisions have been made by the United States and then brought to the table with Canada.

As to whether these discussions will take place, one can only assume that the only way the Canadian government would obtain the position of the other countries would be to engage in dialogue with them.

UNITED STATES—MISSILE DEFENCE SYSTEM—  
COST TO CANADA

**Hon. Douglas Roche:** The former U.S. National Security Adviser to the President, Samuel Berger, said on television that the U.S. missile defence proposal would likely cost U.S.\$100 billion. What would be the Canadian share of that astronomical amount? How can Canada consider putting any money into this scheme when we cannot even afford to supply our armed forces with the equipment that they need right now?

**Hon. Sharon Carstairs (Leader of the Government):** With the greatest of respect to the honourable senator, that is an extraordinarily premature question. First, the Americans have not decided they will even go this route. Certainly, no cost estimates have been developed, since they do not know which direction they particularly want to take.

**Senator Kinsella:** They have a new National Security Adviser.

**Senator Carstairs:** They have not asked for Canada's participation at the present time. To start talking about percentages and amounts of money is way down the line from today's discussion.

**Senator Roche:** Honourable senators, any proposal that has a potential to affect the Canadian taxpayer, as this one does, is certainly not premature to discussion in the early stages, and I want to respectfully offer that as a view for the Canadian government to take under consideration.

#### UNITED STATES—MISSILE DEFENCE SYSTEM— CONSULTATION PROCESS

**Hon. A. Raynell Andreychuk:** Honourable senators, I am pleased with the answer that the Leader of the Government gave with respect to the consultations. Since we are not sure what the concept of missile defence is — there seem to be various theories — we have no idea what the costs will be. We have no understanding of what the implications may be to NATO and NORAD and our involvement there. Will these consultations be formalized in such a way that we can be assured that the Americans will regularly consult us? Will we set out an agenda of our concerns, as opposed to getting involved in the costs and concept, to ensure that, once they have the concept structured and some costs attached thereto, we are involved from the start, as the minister has said, in those things that matter to us? Is there a more formalized consultation process? Are we asking for that, if it is not in place?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the honourable senator puts forward some interesting questions. She has, I think, encapsulated in her opening statement some of the fog in which we are all living at the present time.

• (1410)

She is correct when she asks: What is this ballistic missile defence system? I do not think any of us know, including, at the present moment, the Americans. They are not exactly sure what it means.

There are serious concerns for the implications not only to NORAD and NATO, but for the anti-ballistic missile treaty. What are the long-term financial implications?

The meetings that took place this week, from both the Canadian and the American perspectives, were preliminary in

nature. Both sides indicated that. They said it was a good beginning and that it was the start of a consultation process. President Bush has stated clearly and emphatically that he will consult extensively with allies. We want to be part of that discussion but, ultimately — and this is the point that must be borne in mind — any Canadian decision would only be taken after an analysis of the new global security framework into which the United States would fit the NMD system and a comprehensive review of the implications for Canada.

#### UNITED STATES—MISSILE DEFENCE SYSTEM— ONGOING CONSULTATIONS

**Hon. A. Raynell Andreychuk:** Honourable senators, the dilemma is that if we wait until we receive all the answers from the Americans, it may be too late for our input. We have often been confronted with a "yes or no" situation. Has there been an attempt by the Canadian government to arrange with the Americans a formal, high-level consultation at every stage?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, with respect, I think that is what happened on Tuesday. That was the start.

This is not a "yes or no" situation. The Americans came to Canada saying, "These are some of the ideas we are thinking about and we would like your input." That is what the Canadian government gave them. The meeting was extraordinarily premature in the entire process; I mean premature in the sense that nothing is formally on the table.

We will not be in a position, clearly, to make a "yes or no" decision. We will be in on this every step of the way.

#### CANADIAN BROADCASTING CORPORATION

##### POSSIBLE PARTNERSHIP WITH *TORONTO STAR*

**Hon. Lowell Murray:** Honourable senators, my question arises from news reports to the effect that the CBC is about to enter into a "partnership" with *The Toronto Star* daily newspaper. Does the government know anything about this? Has the government pronounced on it? Will the minister assure the Senate that, before any such partnership is entered into by our public broadcaster with any privately owned media company, the government and Parliament will have an opportunity to pronounce and approve, or otherwise?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I am surprised by the question because was prepared for Senator Murray to ask me questions about Devco. Regarding the CBC and some potential partnership with *The Toronto Star*, he has caught me completely off guard. I have not heard anything about it. I will look into the matter on his behalf. I would hope that vigorous debate would take place before such a merger took place.



## CITIZENSHIP AND IMMIGRATION

### SPECIAL VISA PRIVILEGES FOR MEMBERS OF PARLIAMENT AND SENATORS

#### **Hon. Noël A. Kinsella (Deputy Leader of the Opposition):**

Honourable senators, I am sure many of us read yesterday with interest a report in the media that the Minister of Immigration, Ms Caplan, had established a rule respecting members of Parliament being able to get two visas for people to visit Canada. The news item surrounded the Minister of Fisheries and Oceans having exercised his rights under that ministerial rule to vouch that a couple of visitors to Canada would return home. They did not return.

The rule also states that, if that situation occurs, the Member of Parliament will be punished by not getting a visa for someone he wishes to sponsor.

Does that rule also apply to members of this place? Do senators each have two visas that they could use for visitors? Would the imposition of this penalty that the Minister of Immigration is imposing on Mr. Dhaliwal apply to senators? I do not expect the minister to have answers to these questions today, but do we know how many senators have exercised that right under the Minister of Immigration's rule?

#### **Hon. Sharon Carstairs (Leader of the Government):**

Honourable senators, I am not sure if there is any formal rule or any formal process. All of us who have day-to-day dealings with members of Parliament know that up to 80 per cent of their constituency work in certain parts of this country deals with matters of immigration and visas. It occupies an incredible amount of their time and their energy. Such questions occasionally come my way, but certainly not as often as such issues go to the constituency offices of members of Parliament from my province of Manitoba. We do not have constituency offices, so we do not see the same impact.

The process has been that all members of Parliament — I underline "all" members of Parliament — no matter to what political party they belong, can approach the Minister of Immigration and she will do what she can if she is made aware of particular issues of hardship, such as funerals or celebratory occasions like weddings. The visa process can sometimes be facilitated in that respect.

There are 301 MPs and obviously only so many cases per year can be fast tracked in this particular issue. As to whether senators have the same privilege, I have not exercised it. Perhaps others have anecdotal evidence. I would assume that senators would be treated in exactly the same way as members of Parliament should they come forward with similar requests.

### DELAYED ANSWER TO ORAL QUESTION

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have a delayed answer to

a question raised in the Senate by Senator Stratton on May 1, 2000, regarding the Prime Minister's Office and criteria for appointments.

## PRIME MINISTER'S OFFICE

### CRITERIA FOR APPOINTMENTS

*(Response to question raised by Hon. Terry Stratton on May 1, 2001)*

The Governor in Council appointments process has become more transparent and has been opened up significantly.

It is Government practice to advertise most full-time, fixed term positions in the Canada Gazette. Advertisements in newspapers and specialized magazines may also be used, depending on the nature of the job.

Since September 1993, 130 advertisements have appeared in the Canada Gazette. (A list of positions advertised since September 1993 is attached).

The notice of vacancy, the job description and the selection criteria are prepared in coordination with the organization where the vacancy exists. The job description and the selection criteria are available upon request.

Applicants' qualifications and experience are evaluated against the selection criteria developed for the position, and those candidates meeting the requirements of the position are interviewed.

This process has ensured that highly qualified and competent persons, determined on the basis of objective merit, are selected for appointment.

## NOTICES OF VACANCIES

### SEPTEMBER 18, 1993

#### **1. Canada Labour Relations Board**

Vice Chair

#### **2. Canada Labour Relations Board**

Member

#### **3. Citizenship Commission**

Citizenship Judges

#### **4. Immigration and Refugee Board**

Deputy Chairperson — Convention Refugee Determination Division



**5. Immigration and Refugee Board**

Assistant Deputy Chairpersons — Convention Refugee Determination Division

**6. Immigration and Refugee Board**

Members — Convention Refugee Determination Division and Immigration Appeal Division

**7. Marine Atlantic**

President and Chief Executive Officer

**8. Office of the Correctional Investigator**

Correctional Investigator

**9. National Parole Board**

Members - Ontario Region and Appeal Division

**10. National Transportation Agency**

Members — Pacific Region, Quebec Region and Ontario Region

**11. Veterans Appeal Board**

Additional Members

**SEPTEMBER 25, 1993**

**12. Atomic Energy Control Board**

President and Member

**Canadian Grain Commission**

Assistant Grain Commissioner — Quebec Region

**14. Office of the Coordinator Status of Women Canada**

Coordinator

**OCTOBER 2, 1993**

**15. Canadian Pension Commission**

Commissioners

**16. National Parole Board**

Member - Prairie Region

**17. National Research Council**

President

**OCTOBER 23, 1993**

**18. Copyright Board**

Vice Chairperson

**NOVEMBER 13, 1993**

**19. Canadian Broadcasting Corporation**

President and Chief Executive Officer

**FEBRUARY 5, 1994**

**20. Canada Council**

Director

**FEBRUARY 19, 1994**

**21. National Transportation Agency**

Member - Prairie Region

**FEBRUARY 26, 1994**

**22. Canadian International Trade Tribunal**

Vice-Chair

**23. Canadian International Trade Tribunal**

Member

**MARCH 12, 1994**

**24. Social Sciences and Humanities Research Council**

President

**MARCH 19, 1994**

**25. National Round Table on the Economy and the Environment**

Executive Director

**MARCH 26, 1994**

**26. Library Of Parliament**

Parliamentary Librarian

**27. National Parole Board**

Member - Atlantic Region

**28. National Parole Board**

Member - Pacific Region

**APRIL 9, 1994**

**29. Canadian Radio-Television and Telecommunications Commission**

Commissioner

**APRIL 23, 1994****30. Canadian Film Development Corporation —  
Telefilm Canada**

Executive Director

**MAY 14, 1994****31. Atomic Energy of Canada**

President and Chief Executive Officer

**MAY 21, 1994****32. National Parole Board**

Chairperson

**AUGUST 13, 1994****33. Canadian Artists and Producers Professional  
Relations Tribunal**

Vice-Chairperson

**SEPTEMBER 10, 1994****34. Canadian Human Rights Commission**

Part-Time Members

**SEPTEMBER 17, 1994****35. Copyright Board**

Members

**36. National Energy Board**

Vice-Chairperson and Member

**OCTOBER 1, 1994****37. Canadian Grain Commission**

Assistant Grain Commissioners

**OCTOBER 29, 1994****38. Immigration and Refugee Board**

Executive Director

**NOVEMBER 12, 1994****39. National Film Board**

Government Film Commissioner and Chairperson

**NOVEMBER 26 1994****40. British Columbia Treaty Commission**

Chief Commissioner

**JANUARY 7 1995****41. National Parole Board**

Members

**JANUARY 14 1995****42. Civil Aviation Tribunal**

Chairperson

**JANUARY 21 1995****43. Canadian International Trade Tribunal**

Member

**44. Canadian Race Relations Foundation**

Executive Director

**FEBRUARY 4 1995****45. Canadian Tourism Commission**

President

**FEBRUARY 18 1995****46. National Energy Board**

Member

**FEBRUARY 25 1995****47. National Parole Board**

Members — Quebec Region (Part-time and Full-time)

**MARCH 11 1995****48. National Round Table on the Environment and the  
Economy**

Executive Director

**MARCH 18 1995****49. Transportation Safety Board of Canada (CTAISB)**

Member

**MARCH 25 1995****50. Canadian Pension Commission**

Commissioners

**APRIL 1, 1995****51. National Parole Board**

Members - Prairies Region (Part-Time and Full-Time)

**APRIL 29, 1995****52. Natural Sciences and Engineering Research Council**

President

**JUNE 17, 1995****53. Canada Labour Relations Board**

Members

**JULY 22, 1995****54. Canadian Radio-Television and Telecommunications Commission**

Members

**AUGUST 5, 1995****55. Cape Breton Development Corporation**

President and Chief Executive Officer

**56. National Parole Board**

Members — Atlantic Region (Part-time and Full-time)

**SEPTEMBER 2, 1995****57. Canadian Grain Commission**

Commissioner

**SEPTEMBER 23, 1995****58. Canadian Human Rights Commission**

Members

**OCTOBER 7, 1995****59. Defense Construction**

President and Chairperson

**NOVEMBER 25, 1995****60. National Parole Board**

Part-Time Members (Ontario and Quebec) (plus Erratum)

**JANUARY 6, 1996****61. Public Service Staff Relations Board**

Vice-Chair

**JANUARY 13, 1996****62. National Round Table on the Environment and the Economy**

Executive Director

**JANUARY 20, 1996****63. Canada - Nova Scotia Offshore Petroleum Board**

Chairperson and Chief Executive Officer

**FEBRUARY 24, 1996****64. Civil Aviation Tribunal**

Vice-Chairperson

**MARCH 2, 1996 — MARCH 9, 1996****65. National Parole Board**

Part-Time Members (Prairies and Pacific) (plus Erratum)

**APRIL 20, 1996****66. Canadian Grain Commission**

Commissioner

**MAY 25, 1996****67. Canadian Centre for Occupational Health and Safety**

President and CEO

**JUNE 15, 1996****68. Law Commission of Canada**

President

**JULY 20, 1996****69. Competition Bureau (Industry Canada)**

Director of Investigation and Research

**JULY 27, 1996****70. National Parole Board**

Executive Vice-Chairperson

**SEPTEMBER 7, 1996****71. Competition Bureau (Industry Canada)**

Director of Investigation and Research (*reprinted*)



**72. Canadian Transportation Accident Investigation and Safety Board**

Member(s)

**73. Canadian Museum of Nature**

Director and Chief Executive Officer

SEPTEMBER 14, 1996**74. Law Commission of Canada**President (*reprinted*)SEPTEMBER 28, 1996**75. Hazardous Materials Information Review Commission**

President and Chief Executive Officer

OCTOBER 12, 1996**76. Nunavut Territory**

Interim Commissioner of Nunavut

DECEMBER 14, 1996**77. International Development Research Centre**

President and Chief Executive Officer

**78. Canadian Secretariat, North American Free Trade Agreement**

Secretary

FEBRUARY 8, 1997**79. Farm Credit Corporation**

President and Chief Executive Officer

FEBRUARY 15, 1997**80. Competition Tribunal**

Full-time Lay-Member

FEBRUARY 22, 1997**81. National Parole Board**

Full-time and Part-Time Members (Pacific Region)

**82. Social Sciences and Humanities Research Council**

President and Chief Executive Officer

MAY 17, 1997**83. National Gallery of Canada**

Director

JUNE 7, 1997**84. National Gallery of Canada**Director (*reprinted*)JUNE 14, 1997**85. National Parole Board**

Full-time and Part-Time Members (Prairie Region)

AUGUST 23, 1997**86. Immigration and Refugee Board**

Full-time and Part-Time Members (Montreal, Toronto, Calgary and Vancouver)

**87. Veterans Review and Appeal Board**

Full-time Members (Throughout Canada)

OCTOBER 4, 1997**88. National Parole Board**

Full-time and Part-time Members (Atlantic Region)

DECEMBER 13, 1997**89. National Parole Board**

Full-time and Part-Time Members (Ontario Region)

JANUARY 10, 1998**90. National Energy Board**

Chairperson

**91. National Energy Board**

Members

JANUARY 24, 1998**92. Public Service Staff Relations Board**

Deputy Chairpersons

JANUARY 31, 1998**93. Department of Fisheries and Oceans**

Commissioner for Aquaculture Development

**MARCH 7, 1998****94. Royal Canadian Mounted Police External Review Committee**

Vice-Chairman (Part-time Position)

**APRIL 4, 1998****95. National Parole Board**

Full-Time and Part-time Positions (Quebec Region)

**APRIL 11, 1998****96. Canadian Radio-Television and Telecommunications Commission**

Members and Regional Members (Quebec; Manitoba, Saskatchewan; Alberta/Northwest Territories)

**MAY 2, 1998****97. Canadian Grain Commission**

Assistant Commissioner

**98. Immigration and Refugee Board**

Members (Vancouver)

**MAY 23, 1998****99. Department of Fisheries and Oceans**

Commissioner for Aquaculture Development

**AUGUST 8, 1998****100. Canadian Human Rights Tribunal**

Vice-chairperson

**101. Canada Industrial Relations Board**

Vice-chairperson

**AUGUST 22, 1998****102. Canada Pension Plan/Old Age Security Review Tribunal**

Commissioner

**103. Canada Pension Plan/Old Age Security Review Tribunal**

Deputy Commissioner

**OCTOBER 17, 1998****104. Canadian Museum of Civilization**

Director

**105. Copyright Board**

Vice-Chairperson

**106. Standards Council of Canada**

Executive Director

**MARCH 20, 1999****107. Copyright Board**

Vice-Chairperson Position and Member Position

**APRIL 3, 1999****108. Military Police Complaints Commission**

Chairperson Position (Full-time) and Member Positions (Full or Part-time)

**APRIL 24, 1999****109. National Energy Board**

Vice-Chairperson and Member

**MAY 8, 1999****110. Canadian Forces Grievance Board**

Chairperson and Vice-Chairperson (Full-time Positions)

**JUNE 26, 1999****111. Immigration and Refugee Board**

Chairperson

**SEPTEMBER 11, 1999****112. Marine Atlantic INC.**

President and Chief Executive Officer

**OCTOBER 30, 1999****113. National Parole Board**

Full-time and Part-time Members

**DECEMBER 11, 1999****114. Canadian Institutes for Health Research**

President

**JANUARY 8, 2000****115. Royal Canadian Mounted Police Public Complaints Commission**

Members — Part-time (Provincial, Territorial and -at-Large)

**JANUARY 22, 2000****116. Canada Lands Company Limited**

President and Chief Executive Officer

**FEBRUARY 12, 2000****117. Canadian Tourism Commission**

President and Chief Executive Officer

**APRIL 1, 2000****118. National Parole Board**

Full-time and Part-time Members — Prairie Region

**APRIL 8, 2000****119. Canadian Nuclear Safety Commission**

Full-time President and Part-time Members

**MAY 13, 2000****120. Canada Mortgage and Housing Corporation**

President and Chief Executive Officer

**JUNE 10, 2000****121. Canadian International Trade Tribunal**

Full-time Member

**JULY 1, 2000****122. National Parole Board**

Full-time Chairperson/Member

**JULY 15, 2000****123. Canada Science and Technology Museum Corporation**

Director (Full-time Position)

**AUGUST 19, 2000****124. Old Port of Montréal Corporation Inc.**

President and Chief Executive Officer (Full-time Position)

**DECEMBER 2, 2000****125. National Film Board**

Government Film Commissioner and Chairperson (Full-time Position)

**126. Office of the Auditor General of Canada**

Auditor General of Canada (Full-time Position)

**JANUARY 20, 2001****127. Canadian Race Relations Foundation**

Executive Director (Full-time Position)

**MARCH 31, 2001****128. Financial Consumer Agency of Canada**

Commissioner (Full-time Position)

**APRIL 14, 2001****129. Telefilm Canada (Canadian Film Development Corporation)**

Executive Director (Full-time Position)

**APRIL 21, 2001****130. Office of the Superintendent of Financial Institutions**

Superintendent (Full-time Position)

*[Translation]***ORDERS OF THE DAY****BUSINESS OF THE SENATE**

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, under the heading "Government Business," we would like first to address Item No. 2, namely second reading of Bill C-26 and then continue with Items Nos. 3, 4, 5, and 1.

**TOBACCO TAX AMENDMENTS BILL, 2001****SECOND READING—DEBATE ADJOURNED**

**Hon. Sharon Carstairs (Leader of the Government)** moved the second reading of Bill C-26, to amend the Customs Act, the Customs Tariff, the Excise Act, the Excise Tax Act and the Income Tax Act in respect of Tobacco.

She said: Honourable senators, I am pleased to speak in the debate at second reading of Bill C-26, to amend the Customs Act, the Customs Tariff, the Excise Act, the Excise Tax Act and the Income Tax Act in respect of Tobacco.

On April 5, the Minister of Finance, the Minister of Health and the Solicitor General announced a new comprehensive strategy aimed at improving the health of Canadians and reducing smoking, especially among young people.



[English]

• (1420)

The new strategy represents the most extensive tobacco control program in Canadian history. It includes increased spending on tobacco control programs as well as tobacco tax increases to discourage smoking. Under this strategy, tax increases are linked to a new tobacco tax structure designed to reduce the incentive to smuggle. Bill C-26 implements the tax measures in the new tobacco strategy.

Before discussing these measures, I want to provide some background to this issue. As honourable senators will recall, Canada faced a serious tobacco smuggling problem in the early 1990s. Tax-free exports of Canadian cigarettes were being illegally re-entered into Canada and sold without payment of taxes. Organized criminal activities related to this smuggling problem were also increasing.

In response, the government introduced a national action plan to combat smuggling in 1994. The national action plan introduced a surtax on the profits of Canadian tobacco manufacturers and a tax on certain exports of tobacco products, reduced tobacco taxes and increased enforcement measures. The plan has been very effective in reducing the level of contraband activity and restoring the legitimate market for tobacco sales. To date, the government has been able to increase excise taxes on tobacco products five times since the strategy was put into place.

The new tobacco strategy builds on the action plan of 1994. It provides Canada with additional measures to deal with the many factors that contribute to smoking. Bill C-26 implements a new tobacco tax structure to further reduce the incentive to smuggle tobacco products back into our country and tobacco tax increases to advance the government's health objectives.

When announcing the new strategy, the Minister of Finance stated:

The government's anti-tobacco strategy will help improve the health of Canadians by discouraging smoking. By increasing taxes sharply, and introducing a new tax structure for tobacco, we are taking important steps now and positioning ourselves to take further steps as need be.

The new tobacco tax structure is designed to reduce the incentive to smuggle Canadian-produced tobacco products back into Canada from export markets, the main source of contraband in the past.

The main element of the new tax structure is the replacement of the current tax on exports of tobacco products with a new two-tiered excise tax on exports of Canadian-manufactured tobacco products effective April 6, 2001.

In 1994, several exemptions from the export tax were provided to ensure that Canadian tobacco manufacturers had access to legitimate export markets. For example, exports up to 3 per cent of a manufacturer's annual production were exempt from the tax.

This threshold was reduced to 2.5 per cent of production in April of 1999. Under Bill C-26, the threshold is reduced further to 1.5 per cent of a manufacturer's annual production in the previous calendar year. This threshold represents the approximate level of exports required to meet the legitimate demands for Canadian tobacco products abroad, principally in the United States.

[Translation]

Under the new tax structure, all exports of Canadian tobacco products will be taxed. This will reduce the incentive to smuggle Canadian-produced tobacco products back into Canada from export markets. In addition, the new tax will be two-tiered. A tax of \$10 per carton will apply on exports up to the 1.5 per cent threshold. This tax will be reimbursed on presentation of proof of payment of foreign taxes. This will avoid double taxation of these products when they are sold on legitimate foreign markets.

[English]

Exports of Canadian tobacco products over the threshold will be subject to the current excise duty on tobacco products and a new excise tax that in total will amount to \$22 per carton of cigarettes. There will be no refunds of this second tier export tax. This measure will reduce the potential for smuggling and help set the stage for future tobacco tax increases.

The next element of the new tax structure concerns tobacco products sold at duty-free shops and ship's stores. At present, duty free shops are authorized to sell certain goods, including tobacco products, tax and duty-free. Tobacco products may also be sold free of taxes and duties when supplied as ship's stores. Ship's stores are provided for use by crew and passengers and sold to passengers through on-board duty-free shops on ships and aircraft with an international destination.

The government believes that all Canadian brands of tobacco products should be taxed regardless of where they are sold in order to meet our health objectives of reducing smoking. As a result, Canadian tobacco products delivered to duty-free shops and ship's stores both at home and abroad will now be taxed at a rate of \$10 per carton of cigarettes effective April 6, 2001.

Further, this bill amends the travellers' allowance to ensure that returning residents are no longer allowed to bring back tax and duty-free tobacco products. Effective October 1, 2001, a new duty of \$10 per carton of cigarettes will be imposed on these products when they are imported by returning residents. Until now, returning residents who have been out of the country for more than 48 hours have been able to bring back one carton of cigarettes tax and duty free as part of the travellers' allowance. To ensure that Canadian residents are not subject to double taxation upon returning to Canada with Canadian tobacco products on which a tax has already been paid, neither this duty nor regular excise duties and taxes will apply to tobacco products that bear a Canadian stamp signifying that excise duties and taxes have already been paid. This change to the travellers' exemption will not apply to non-residents.

Honourable senators, allowing Canadians who travel to continue to have access to low-cost, tax-free tobacco, either through duty-free shops, ship's stores or under the travellers' exemption, would be inconsistent with the government's strategy of raising tobacco taxes domestically to achieve its health objective of reduced smoking. These new measures demonstrate just how serious the government is about reducing tobacco consumption.

Another key component of the new tobacco strategy involves tobacco tax increases. Through this bill, the federal government is raising tobacco tax rates jointly with the five provinces that matched its tobacco tax reductions in 1994 when the national action plan to combat smuggling was implemented. As of April 6, 2001, the combined federal-provincial tax increases by \$4 per carton of cigarettes sold in New Brunswick, Prince Edward Island, Nova Scotia, Ontario, and Quebec. This measure will restore federal excise tax rates to a uniform level of \$5.35 per carton on cigarettes for sale in Nova Scotia, New Brunswick and Prince Edward Island. This is equal to the current federal tax rate in the provinces that did not reduce taxes jointly with the federal government in 1994. After this tax increase, only Ontario and Quebec will have cigarette excise tax rates below the national rate.

Other measures in Bill C-26 include increased taxes on fine-cut tobacco and tobacco sticks sold across Canada and the elimination of the reduced rate of federal excise tax on fine-cut tobacco for sale in Ontario.

As I indicated earlier, honourable senators, this is the fifth increase in tobacco taxes since 1994. Federal revenues from tobacco products will grow by \$200 million annually as a result of these increases.

Another measure in this bill increases the surtax on the profits of tobacco manufacturers to 50 per cent from the current rate of 40 per cent effective April 6, 2001. This surtax was initially introduced in 1994 on a three-year temporary basis as part of the national action plan to combat smuggling. It was subsequently extended for three years in 1997 and made permanent on February 8, 2000. The surtax currently brings in approximately \$70 million annually, and will now raise an additional \$15 million each year.

• (1430)

Before concluding, I want to mention that the government is providing additional resources to help federal departments and agencies, like the RCMP and the Canada Customs and Revenue Agency, monitor and assess the effectiveness of the new tax measure in reducing smuggling.

[Translation]

These additional resources will cost \$15 million the first year and \$10 million a year after that.

Honourable senators, the provisions in this bill reaffirm the government's commitment to reducing tobacco consumption in Canada.

[English]

The new tobacco tax structure will help reduce smuggling, and the tobacco tax increases will help advance the government's health objectives to reduce smoking. This is particularly true in the important area of youth smoking. Teenagers are sensitive to price increases. Viewed in the light of the government's other harm-reduction initiatives, the increase in taxes on cigarettes complements the government's overall strategy to reduce youth smoking. I believe that the new strategy demonstrates the depth of the government's commitment to reducing tobacco use.

Endorsements of this new strategy from groups like the Canadian Cancer Society, the Heart and Stroke Foundation of Canada and the Alberta Tobacco Reduction Alliance serve to confirm that the government is on the right track to reducing smoking by Canadians, particularly young Canadians. I encourage honourable senators to give their full support to this bill.

**Hon. Sheila Finestone:** Honourable senators, I should like to pose a question to the Honourable Senator Carstairs.

The report was interesting. It sounds punitive to those who might be afflicted with this disease. Notwithstanding that, those are huge sums to the Consolidated Revenue Fund. Will all those new funds be dedicated to promotion and education particularly targeting our youth, or will some of it enrich the Consolidated Revenue Fund?

**Senator Carstairs:** I thank the honourable senator for her question. I think Senator Finestone was assuming that not all moneys would go into a tobacco reduction strategy, and she is accurate in that assumption. Not all moneys will go into such a strategy. Some of the moneys will be used, as I indicated in my speech, to prevent smuggling. This, of course, is why we developed the original plan in 1994, when smuggling in certain provinces became so horrendous that it was felt necessary at that time to reduce the taxes in order to eliminate the smuggling.

What has happened, I think somewhat to our benefit, is that taxes have gone up in many of the border American states, which now means that the advantage of smuggling is much less today than what existed in 1994.

Yes, some of the dollars will end up in general revenues. One would then hope that in terms of our overall health care strategy, those moneys would find their way back into health in order to support those who have this unfortunate addiction.

**Hon. Wilbert J. Keon:** Honourable senators, I, too, have a question for the Honourable Senator Carstairs.



I think Senator Carstairs will agree with me that our educational programs for smoking and for drug addiction have been very poor. In particular, educational programs targeted at young women for smoking have been very poor. I appreciate that there is no direct connection between this bill and a diversion of funds — the honourable senator already spoke to that — into educational programs.

Given the minister's influence in cabinet, would she try to influence cabinet, and her colleague the Minister of Health and the Prime Minister, into a momentous program of education? In the drug program, as well as in the tobacco program, instead of wasting funds on policing and legislation, we should be educating the public about this problem. The majority of young women who are smoking are highly intelligent. They are simply not getting educated the way they should be educated.

Would the honourable senator use her influence in cabinet to do something about that?

**Senator Carstairs:** The honourable senator, with his knowledge of disease, and in particular diseases of the heart, knows the dangers of smoking. It is a widely held view that smoking only affects the lungs. We all know, however, that smoking has an impact on a broad number of diseases, heart disease being one of them, and all of the cardiovascular problems as well.

There have been inadequate education programs, both in the schools and in the public domain. One of the problems is with respect to teenagers. The early to the late teenagers, who are most susceptible to the attractions of smoking, and young women, who are attracted by the fact that smoking may enhance their body image because it may keep them slimmer, need to be exposed to education. Unfortunately, they do not like that education to come from teachers, who they feel are lecturing to them. The experience has been that it is much better if that education comes via peers, who have had similar experiences or who can frankly give the message, "I don't want you, my friend, to die." That is a far more effective message to get out to the young people of this country.

I am pleased to say that, as a result of this policy, an additional \$480 million will be spent over five years to enhance programs like the ones the honourable senator and I have been discussing. I can assure Senator Keon that my voice at the cabinet table will be very loud on this issue.

On motion of Senator Kinsella, for Senator Nolin, debate adjourned.

## INCOME TAX AMENDMENTS BILL, 2000

### SECOND READING—DEBATE ADJOURNED

**Hon. Tommy Banks** moved the second reading of Bill C-22, to amend the Income Tax Act, the Income Tax Application

Rules, certain Acts related to the Income Tax Act, the Canada Pension Plan, the Customs Act, the Excise Tax Act, the Modernization of Benefits and Obligations Act and another Act related to the Excise Tax Act.

He said: Honourable senators, it is my pleasure to present Bill C-22, the proposed Income Tax Amendments Act, 2000, for second reading today.

Tax relief continues to be a priority for this government. From day one of coming into office, the government has been firmly committed to enhancing fairness in the tax system. The measures in Bill C-22 are part of that ongoing commitment. The government's approach to changes in the tax system is based on four key principles.

The first principle is that our approach to tax reduction must be fair, beginning with those who most need the relief, that is, middle- and low-income earners, especially families with children. Second, we will focus initially on personal income tax, since that is where we are most out of line. Third, we will ensure that Canada has an internationally competitive business tax system. Fourth, we will not finance tax relief with borrowed money because that just means an inevitable return to higher taxes in the future.

As honourable senators know, the government has consistently moved to lessen the tax burden on Canadians. Once we were able to eliminate the deficit and start the debt on a downward path, we began to cut taxes for all Canadians. Bill C-22 is the biggest step forward to date in our tax-cutting effort.

The government promised Canadians in 1999 that it would set out a multi-year tax plan for further tax reduction. The 2000 budget delivered on that commitment by making the most important structural changes to the Canadian tax system in over a decade, with a special emphasis on the needs of families with children.

• (1440)

The 2000 budget set out a five-year \$58-billion tax relief plan that was further expanded to \$100 billion in last fall's economic statement and budget update, making this the largest tax cut in Canadian history. Bill C-22 implements the key elements of that five-year tax reduction plan, which will reduce the federal personal income tax paid by Canadians by 21 per cent on average. Families with children will receive an even larger tax cut, a reduction of about 27 per cent on average.

Honourable senators, the measures that are contained in this bill are all encompassing. Along with the broad-based tax reduction measures, the bill contains many additional changes to both the personal and business tax systems.



The technical amendments that died on the Order Paper as part of Bill C-43 in the last Parliament are also part of this bill. Some of the technical amendments are relieving in nature, some correct technical deficiencies in the act, and others tighten the administration of the tax system.

This is a very fat bill, as honourable senators all know, and I want to discuss today the highlights of it. To begin, I wish to point out the personal income tax changes.

The elements of the five-year tax reduction plan included in this bill reduce personal income taxes for all Canadians. They increase support for families with children. They take steps to promote entrepreneurship, economic growth and job creation in a way that gives Canada an advantage in the new economy.

With respect to personal income taxes, Bill C-22 provides for tax reductions at all income levels as of January 2001. Canadians will be able to earn more, income tax free, and more of their income will be taxed at lower rates.

Under the measures proposed in bill, the low- and middle-income tax rates fall to 16 per cent and to 22 per cent respectively. The top 29 per cent rate is reduced to 26 per cent for those incomes between \$61,000 and \$100,000. The top tax rate of 29 per cent stays in place only for those Canadians earning more than \$100,000. In addition, the 5 per cent deficit reduction surtax is eliminated as of January 2001.

Bill C-22 also proposes significant enhancements to the Canada Child Tax Benefit. These changes need to be in place, honourable senators, by July 1 of this year in order for Canadian children and Canadian families to receive the full advantage of them. As honourable senators know, the child tax benefit is a key element of federal assistance to families. It is an income-tested benefit, made up of the base benefit for low- and middle-income families and the National Child Benefit supplement for low-income families. This bill raises the maximum child tax benefit for the first child to \$2,372 as of July 1, 2001, well on the way to the five-year goal of \$2,500 per year by 2004. The maximum child tax benefit for the second child will increase to \$2,308 in July of 2004.

Honourable senators, it is imperative that these changes be in place by July 1 of this year if families and children are to receive the full benefits on time.

Several other changes to the personal income tax regime are specifically designed to provide tax relief to those who need it most. For example, the bill increases the amount on which the disability tax credit is calculated from \$4,293, as it is now, to \$6,000. It expands the list of relatives to whom the disability tax credit can be transferred so that it is consistent with the medical expense tax credit rules. It allows speech language pathologists to determine eligibility for the DTC with respect to speech

impairments. It increases the maximum child care expense deduction to \$10,000 from \$7,000 for children for whom the DTC could be claimed. It raises the amount on which the caregiver and infirm dependant credits are based to \$3,500.

When a principal place of residence is built for people who lack normal physical development or have severe and prolonged mobility impairments, this bill proposes that certain incremental costs will be allowed under the medical expense tax credit.

In addition, under this bill, up to \$3,000 in scholarship, fellowship and bursary income is tax-exempt where it is paid in connection with educational programs that qualify for educational tax credit. The present rate is \$500. That is a \$2,500 increase.

Further, self-employed individuals will now be able to deduct the employer portion of CPP or QPP contributions that they pay for their own coverage. The remaining portion will continue to be eligible for a personal tax credit at the lowest tax rate. This change ensures that self-employed individuals are not at a disadvantage by comparison with owner-operators. Self-employed individuals would be able to deduct the employers share of their CPP or QPP payments.

I mentioned earlier that this bill also contains technical amendments, some of which were introduced in Bill C-43 in the last Parliament but never passed. The technical amendments are numerous. Examples of them include clarifying the tax treatment of certain resource expenditures. In a chain of corporations, a corporation is controlled by its immediate parent when that immediate parent is, itself, controlled by another corporation. The tax treatment of certain limited liability partnerships is also clarified in this bill.

Honourable senators, all of these measures are designed to improve tax fairness in the operation of our tax system.

I will now discuss some of the changes to the business tax system.

As I said earlier, the government is committed to ensuring that Canada has an internationally competitive business tax system. Canada needs such a system in order to prosper in the new global economy. This is important because business tax rates have a significant impact on the level of business investment, on employment, productivity, and on wages and incomes.

The five-year tax reduction plan goes a long way towards reaching this goal. One of the ways it does so is through corporate tax reductions. Under Bill C-22, federal corporate income tax rates will drop to 21 per cent from 28 per cent for businesses in the highest-taxed sector, such as high-technology services, to make them more internationally competitive. These reductions begin to take effect as of January 1, 2001.

By 2005, the combined federal-provincial tax rate will drop from the current average of 47 per cent to 35 per cent, which is 5 percentage points lower than the United States. This will also put our businesses on a more competitive basis with respect to other G-7 countries.

Another element of the tax reduction plan allows tax deferred capital gains and rollovers of those capital gains for investments in shares of certain small and medium-sized active business corporations. The capital gains inclusion rate also drops to one-half, which will make our top federal-provincial tax rate on capital gains lower than the comparable United States combined top rate.

Increasing the employee stock option deduction from one-third to one-half means that employees in Canada will be taxed more favourably on their stock option benefits than employees in the United States. We have heard much about that in the last months; we want to address that imbalance. In addition, Bill C-22 defers the taxation of certain stock option benefits and allows an additional deduction for certain stock options shares that are donated to charity.

Honourable senators, Bill C-22 also includes amendments that accommodate branches of foreign banks operating in Canada. As a result of Bank Act amendments in 1999, foreign banks are now allowed to establish specialized, commercially focussed branches in Canada. Previously, they could only operate under the aegis of Canadian incorporated subsidiaries. Bill C-22 ensures that a comparable tax system exists for both Canadian banks and foreign banks with branches operating in Canada.

Some of the other business tax measures include tax-deferred rollovers for shares received on certain foreign spin-offs, strengthened capitalization rules, and a phasing out over a three-year period of the special income tax regime for non-resident-owned investment corporations.

• (1450)

There will also be a temporary 15 per cent investment tax credit for grassroots mineral exploration; a revised corporate divisive reorganization set of rules; and an appropriate treatment of foreign exploration and development expenses in computing foreign tax credits.

Honourable senators, these are just a few examples of the extensive changes implemented in Bill C-22 in respect of the business income tax system. As with the personal tax changes, each measure is designed to improve tax fairness in the operation of our tax system. The technical amendments pertaining to the business tax system that were included in former Bill C-43, which died on the Order Paper before the last election, are also extensive.

I will give honourable senators a few important examples. It extends the additional capital tax on life insurance corporations

until the end of 2000. It ensures that Canadian corporations holding shares of non-resident corporations through partnerships are not subject to double taxation. The bill also ensures that shares of one foreign corporation can now be exchanged on a tax-deferred basis for shares of another. Replacement property rules do not apply to shares of the capital stock of corporations. The definition of "investment tax credit" is clarified, as is the tax treatment of resource expenditures and the rules governing gifts of ecologically sensitive land.

There are three additional measures that I want to highlight today for honourable senators. They would change the rules governing the taxation of trusts and their beneficiaries. Many of the changes of these three measures bridge gaps in the existing income tax law. Bill C-22 addresses the tax treatment of property that is distributed from a Canadian trust to a non-resident beneficiary. It also introduces measures that deal with the tax treatment of bare, protective and similar trusts, as well as mutual fund trusts, health and welfare trusts and trusts governed by RRSPs and RRIFs. In addition, it includes new anti-avoidance measures designed to ensure that transfers of trusts cannot be used to inappropriately reduce tax.

Another part of Bill C-22 concerns the new taxpayer migration rules, which are also part of our ongoing commitment to greater fairness in the tax system. Since 1972, Canada has had special tax rules that apply when people give up Canadian residence, the basic element of which is a "deemed disposition" that treats emigrants as having disposed of property immediately before leaving. Bill C-22 clarifies that Canada retains the right to tax emigrants on gains that accrue during their stay in Canada. It also clarifies the effect of these new rules on various kinds of rights to future income. The bill allows returning former residents to generally "unwind" the tax effects of their departure, regardless of how long they were non-resident.

The final measure of Bill C-22 relates to the 1999 agreement between Canada and the United States concerning foreign periodicals, about which we have all heard a great deal. Since the 1960s, the Income Tax Act has precluded Canadian businesses from deducting advertising expenses, unless they were in a newspaper or periodical that is at least 75 per cent Canadian-owned and contains at least 80 per cent original Canadian content. As a result of the 1999 agreement between the United States and Canada that rule no longer applies to advertisements in periodicals. Instead, advertising expenses in periodicals with at least 80 per cent original editorial content will be fully deductible, and those in other periodicals will be deductible at 50 per cent, regardless of the ownership of the newspaper or the periodical.

Canadian pension funds and other entities that own Canadian newspapers qualify as Canadian citizens under the ownership requirements of this bill. That has been valid since June 1996.



In summary, I want to remind honourable senators that for this government, fiscal responsibility is fundamental and that tax cuts are essential. At the same time, the government is committed to maintaining an effective, fair and technically valid tax system. Bill C-22 meets all of these requirements. Each measure in this bill adheres to one of the principles of tax fairness to which our government remains steadfastly committed.

Honourable senators, I encourage you to pass this bill after due deliberation and examination with alacrity, especially given that Canadian families and children need the increase that is contained in this bill, which can be made payable to them on July 1.

On motion of Senator Kinsella, for Senator Bolduc, debate adjourned.

[Translation]

### BUDGET IMPLEMENTATION ACT, 1997 FINANCIAL ADMINISTRATION ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

**Hon. Yves Morin** moved the second reading of Bill C-17, to amend the Budget Implementation Act, 1997 and the Financial Administration Act.

He said: Honourable senators, I am pleased to rise to speak at second reading stage of Bill C-17, to amend the Budget Implementation Act, 1997 and the Financial Administration Act.

The amendments to the Budget Implementation Act, 1997 relate to additional funding for the Canadian Foundation for Innovation to include research outside Canada and extension of its activities to 2010.

The amendments to the Financial Administration Act relate to the Canada Pension Plan Investment Board and the borrowing power of federal departments. I will begin by addressing the additional funding for the Canadian Foundation for Innovation, but first I will place this measure in context.

Academic research funding has always been, and continues to be, one of the federal government's foremost priorities. Elimination of the deficit has made it possible for the government to inaugurate several initiatives for funding university-based research: a more generous tax scheme for research; additional funding to the granting councils; creation of the Canadian Institute for Health Research, a truly innovative model for health research development; \$900 million in funding for the 2000 Canada Research Chairs in Canadian universities; more funding to the centres of excellence; \$300 million to Genome Canada; and the creation of the Canadian Foundation for Innovation, one of the topics of this debate.

[English]

In addition, honourable senators, the government is committed to doubling the current investment in research and development

by the year 2010. That target was announced in the Speech from the Throne in January 2001.

During its mandate, the government plans to increase its investment in the granting councils; accelerate Canada's ability to commercialize research discoveries, and turn them into new products and services; and finally, pursue a global strategy for Canadian science and technology to put Canada at the forefront of international research.

These initiatives, including the proposal from the Speech from the Throne, confirm that funding for university research remains high on the government's list of funding priorities. The Minister of Finance reinforced this commitment last fall when he stated:

Over the past four years, this government has introduced an unprecedented series of strategic initiatives to rebuild the research infrastructure of our universities, in order to attract and retain the best minds, and to expand their opportunities here in Canada.

[Translation]

The Canada Foundation for Innovation is part of that series of strategic initiatives. In order to meet the infrastructure needs of universities and hospitals, the federal government announced in the 1997 budget the creation of the Canada Foundation for Innovation and gave it an initial budget of \$800 million to ensure the financial support needed to modernize the research infrastructure of universities, hospitals and research centres in the fields of health, the environment, the sciences and engineering.

• (1500)

The 1999 budget injected an additional \$200 million. Without these additional funds, the Foundation's grants, distributed in the context of a peer review process, would have stopped during the year.

The budget for 2000 provided an additional \$900 million, while, as a result of last fall's Economic Statement and Budget Update, an additional \$500 million was injected into the Foundation's grants.

[English]

Honourable senators, the foundation's success can be seen in the willingness of our universities, research hospitals, businesses, voluntary sectors, individuals and provincial governments to partner with it in order to enhance Canada's research infrastructure. In most cases, the foundation is able to provide up to 40 per cent of funding for research infrastructure projects. The foundation has funded projects in every part of our country, created opportunities and established new researchers. To date, it has supported 95 research organizations across Canada, including 65 universities, 18 colleges and 12 research hospitals. The provinces, for example, have strongly supported the participation of their research institutions in the foundation's program, either by contributing to the project or by establishing complementary funding programs of their own. Quebec and Ontario, for example, have created funds that match the foundation's awards.



Bill C-17 legislates an additional \$1.25 billion in 2000-01 for the Canada Foundation for Innovation and extends its activities to 2010. This injection of \$1.25 billion includes \$500 million from the October 2000 economic statement and budget update and a further \$750 million that was announced on March 6, 2001, by the Ministers of Finance and Industry.

The \$500 million announced last October will be invested in two ways: \$400 million dollars will go to support the operating costs of new awards, and \$100 million will help facilitate the participation of Canadian researchers in international research projects and facilities that offer significant research benefits to Canada.

The additional \$750 million announced in March will build on this funding by providing additional stability to our universities as they plan their future research priorities. Together, this increased funding will bring the total federal investment in the foundation to an amazing \$3.15 billion.

[Translation]

Honourable senators, Bill C-17 also amends the Financial Administration Act.

That act provides, among other things, for the financial administration of the Government of Canada, the establishment and maintenance of its accounts and the control of Crown corporations.

It also establishes the regulatory framework under which the government can borrow funds, and it ensures that Parliament authorizes the government, or its agents, to borrow funds.

The first amendment included in the bill concerns the Canada Pension Plan Investment Board, which was inadvertently removed from section 85(1) of the Financial Administration Act when the Canadian Wheat Board Act was amended, in 1998.

This oversight means that under the Financial Administration Act, the Canada Pension Plan Investment Board was subjected to the various provisions of Divisions I to IV of Part X of that act on the control of Crown corporations and was in a situation of conflict, since its mandate provides that it operates at arm's length from the government.

That situation was not created voluntarily, because when the act establishing the investment board was promulgated, the board had been exempted from the application of the various provisions of the Financial Administration Act dealing with the control of Crown corporations.

[English]

Bill C-17 reinstates the Canada Pension Plan Investment Board on the list of Crown corporations exempt from Divisions I

to IV of Part X of the Financial Administration Act. This exemption protects the independence of the board while the Canada Pension Plan Investment Board legislation itself provides a strong accountability regime ensuring that a high standard of audit and reporting is followed. This change will be retroactive to December 1998 to ensure that the Canada Pension Plan Investment Board has always operated within the laws of Canada.

The second amendment reinforces the authority of Parliament over any borrowing by and on behalf of the Crown. It also strengthens the role of the Minister of Finance in ensuring the appropriate management of government indebtedness. This amendment provides for greater certainty that it is Parliament that must specifically authorize borrowings that are made on behalf of Canada.

Additionally, Bill C-17 ensures that all borrowings, and not just the borrowings of money, are covered under section 43 of the Financial Administration Act and are subject to the supervision of the Minister of Finance.

[Translation]

In closing, honourable senators, I must point out that the amendments to the Financial Administration Act are intended to improve its application.

I would also point out that this additional allocation to the Canadian Foundation for Innovation is implementing the commitment made by the government to double its present investment in research by the year 2010.

Last October, the Minister of Finance stated as follows:

Success in the new economy will not be determined by technology alone, but by creating an environment of excellence in which Canadians can take advantage of their talents, their skills and their ideas.

[English]

The Canada Foundation for Innovation is helping to create this environment for excellence. The foundation needs this increased funding so that it can continue to promote research in Canada and inspire new young Canadian researchers, which I am sure we all agree is an important investment in Canada's future.

Honourable senators, I urge you to give this legislation your full support.

On motion of Senator Kinsella, for Senator Bolduc, debate adjourned.

[Translation]

## TOBACCO TAX AMENDMENTS BILL, 2001

### SECOND READING

Leave having been given to revert to Item No. 2 under Inquiry No. 61:

On the Order:

Resuming debate on the motion by the Hon. Senator Carstairs, P.C., seconded by the Hon. Senator Robichaud, P.C., for second reading of Bill C-26, to amend the Customs Act, the Customs Tariff, the Excise Act, the Excise Tax Act and the Income Tax Act in respect of tobacco.

**Hon. Pierre Claude Nolin:** Honourable senators, I thank you for having agreed to set aside the *Rules of the Senate* and allow me to speak to Bill C-26, at second reading stage.

The purpose of this bill deserves to be supported. The Senate's role in this issue cannot be ignored, in light of the effective support this institution has repeatedly given to all measures aimed at slowing the spread of smoking, particularly among young people.

• (1510)

This bill concerns transactions surrounding the sale of tobacco products and the increase in the tax structure related as well to the sale of these products. All studies indicate that an increase in the price of tobacco has a direct effect on young Canadians by dissuading them from starting down the deadly road of smoking.

We must absolutely and together praise the government's decision to re-establish a tax structure intended to limit the spread of smoking. Until 1994, we had a serious problem with the reimportation into Canada of tobacco products originating here. Tobacco manufacturers, because of the tax structure on the export duties on tobacco products, sold tobacco to the U.S., which came back into Canada without being taxed. The product, stripped of all its original taxes had a very attractive market value. We know the rest.

This bill aims at closing this valve and will enable us to ensure that tobacco products intended for export are properly taxed in order to prevent the reimportation into Canada of products that were originally meant for Canadian consumption.

There is one item I must mention, and we will hear government officials on this in committee. The bill provides for an increase in the rate of the surtax on Canadian tobacco manufacturers' profits. This surtax, which the government created in 1994, generates \$70 million annually. The government

wants to increase this surtax in Bill C-26 in order to bring in an additional \$15 million annually, approximately.

Honourable senators, I say "well done," if the \$70 million the surtax generates are properly spent and go to creating programs to reduce the harmful effects of smoking.

I, personally, do not think this is the case. It reminds me of certain speeches made in this House early in the debate on another measure to establish an independent foundation, funded totally independently by government funds, that would promote a program to reduce smoking among young Canadians, in fact. It will be interesting to see what becomes of the additional \$15 million.

Again, I say "well done," if the government is truly committed to spending a total of \$85 million annually to reduce tobacco consumption among Canadians. Honourable senators, I urge you to support this bill, so that it can be referred to a committee for consideration as quickly as possible.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, could Senator Nolin explain whether there is a convergence between Bill S-15, which went through third reading this week, and the government bill now before us?

**Senator Nolin:** Honourable senators, the two bills pursue the same objectives, but they differ in the means used to achieve these objectives. Bill S-15 provides for the establishment of a foundation that would deal at arm's length with the government and whose funding would be totally independent.

Bill C-26 provides that, thanks to the surtax on tobacco products, an annual amount of \$185 million be put into the consolidated revenue fund.

The two bills propose measures that are conducive to making tobacco products less appealing, particularly for young people who do not have a lot of money. A pack of cigarettes is much more appealing if it costs \$2.50 instead of \$6.50. The two bills try to solve the same problem, but through the respective means of each authority.

[English]

**Senator Kinsella:** Honourable senators, with the explanation that there is a convergence with Bill C-26 and Bill S-15, and given that this bill was moved in the house by the honourable minister and seconded by our good friend Senator Taylor, we could therefore expect that the government, given government solidarity, would support Bill S-15 in the House of Commons.

**Hon. Nicholas W. Taylor:** If I may ask a question, just to follow Honourable Senator Nolin's line of reasoning, what does the honourable senator think will happen if this bill receives Royal Assent? The Senate has already passed Bill S-15. Is there any conflict in the senator's mind in trying to put the two bills out at the same time?



**Senator Nolin:** The answer is no. That answer is based on the amount of money available from Bill S-15 that will be invested to reduce smoking prevalence in the younger members of our population. Data from the United States shows that between \$10 and \$20 per Canadian per year must be spent to reduce smoking prevalence in the younger population.

The scheme in Bill S-15 is different. It is apart from the tobacco manufacturers' surtax, which will provide another \$15 million, hopefully to be spent on the main objective, which is to reduce smoking prevalence among the total population in Canada. The price of the product will increase, of course, and provide money to the public treasury. I am interested in seeing the price of cigarettes rise to a level that will not trigger black market activity. Reimportation into Canada of Canadian product will be almost impossible, as there will be a tax on exportation. There will be no interest in reimporting tobacco products into Canada. What is important is that the price will be higher. That will reduce the likelihood that younger Canadians will be interested in commencing to smoke tobacco.

**Senator Taylor:** Rather than adjourn the debate, honourable senators, I wish to speak for about five minutes. I wanted to speak on this matter the other day following Senator Kenny's speech, but he had given us such a huge bale of hay that I thought there was no use trying to feed the animals another bale. Today, things have settled down.

I was chairman of the Energy Committee at a time when we travelled across the country to hold hearings on the tobacco issue. The tobacco bill had been referred to the Energy Committee. We thought this was an economical way of killing two birds with one stone or, perhaps, stoning two birds with one sitting. The point is that we were to get across the country. There was no doubt in listening to the submissions made by the medical associations in Vancouver, Edmonton, Calgary, Toronto, Montreal, St. John's, Newfoundland and in Halifax, as we heard Senator Keon say earlier, that people felt quite strongly that Bill S-15 was good for three reasons.

• (1520)

First, it would raise the price of cigarettes, which this bill does as well. Second, there is a slight variation from Bill S-15 to this bill before us. Perhaps the committee destined to study the matter will be able to iron it out. Bill S-15 had a hands-off approach to the decision-making body. As a matter of fact, at the moment the Energy Committee is studying an arm's-length body which was set up to invest \$100 million into the sustainable development fund. The government has even appointed directors and started listening, which makes it an entirely different issue as to political correctness. The point of the matter is that governments often do set up arm's-length organizations to go after such issues.

Those who made presentations to us wanted an arm's-length organization. That is because, in 1994, I believe, we were

supposed to put up \$68 million. The idea was to increase the sum to \$100 million in three or four years for education. Unfortunately, it decreased to zero in three to four years because that money was used to balance the budget.

The third reason they argued, as Senator Nolin has pointed out, is that to be totally effective you have to spend about \$12 per capita, and perhaps as high as \$15 per capita. That amount was determined as a result of the testimony by Americans who appeared before the committee. They said that if you spend \$2 or \$3, nothing will happen. However, if you spend between \$12 and \$18 you are able to reduce smoking among youth anywhere from 25 to 28 per cent, down to as low as 9 or 12 per cent. This is a terrific cut. As a matter of fact, the representative from California pointed out to us that the savings to the Government of California were \$3 for every \$1 spent on education. Time and again we were warned that spending less than \$3 per capita, which this bill contemplates, was wasting money. In a speech the other day I said it was like putting 10 pounds of air in a tire that needs 38 pounds. In other words, you will be in just as much trouble as if you had not put any money into it at all. Perhaps air is an unfortunate example to use with a bunch of politicians. Nevertheless, it was an analogy I thought of at the time.

This bill has good intentions, but there are two things I do not like about it. First, it leaves the money that is raised from the sale of a drug that kills 30,000 to 40,000 people per year in Canada — a drug to which children younger than teenagers are addicted — in the hands of politicians. Perhaps I have spent too many years in opposition. However, that is one of the things about the bill that worries me. Perhaps we can get around that somehow. I hope we can.

The second item about this bill that worries me is the amount of money we are spending. What I am worried about is that after two or three years they will pull out the stats and say, "We have only cut smoking by teenagers from 25 per cent to 20 per cent, or not at all. There is no use putting any money in it." In other words, we could be worse off than where we are now.

Nevertheless, I will not stand in the way of the bill going to committee. I have not had a chance to speak to this bill before. Since the taxpayer paid a certain amount of my travelling expenses across the country as a member of the committee to listen to evidence on tobacco and the entire idea of youth and their use of tobacco, I certainly thought I had a responsibility to speak to it. Outside of making a formal report to the Senate, I chose to speak to the bill today in order to make a report on the findings.

**The Hon. the Speaker *pro tempore*:** Is the house ready for the question?

**Hon. Senators:** Agreed.



**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Robichaud, bill referred to Standing Senate Committee on Banking, Trade and Commerce.

## CANADA SHIPPING BILL, 2001

SECOND READING—DEBATE ADJOURNED

**Hon. Catherine Callbeck** moved the second reading of Bill C-14, respecting shipping and navigation and to amend the Shipping Conferences Exemption Act, 1987 and other Acts.

She said: Honourable senators, Transportation has always played a vital role in our history, and it continues to do so today. The current act is, without exaggeration, antiquated. The act came into law in 1936 and was based on the 1896 British merchant shipping law.

The Canada Shipping Act is the principal piece of legislation governing personal safety and environmental protection in the marine sector. No one can deny the pressing need to review and to overhaul it.

Transportation Canada data indicates that, in 1999, the civil marine industry directly employed approximately 31,000 people and shipped a total of 334 million tonnes of cargo. The shipping industry moved imports and exports worth \$83 million in 1999. Despite this impressive record, Canada's shipping industry will find it increasingly difficult to compete internationally unless we implement transportation policies based on sound, modern legislation.

Honourable senators, Bill C-14 is the result of five years of work by the Department of Transport, in conjunction with the Department of Fisheries and Oceans, the Department of Industry and other affected parties. Numerous consultations on the bill have occurred during the process, including the release of a draft bill in June 1999.

The consultative process is an excellent example of cooperation between the government and marine communities. Everyone had a chance to participate in the review of this important legislation, from commercial shipping in supertankers to the recreational boating community. This bill establishes the legal framework that focuses on safety and the promotion of a healthy environment, both of which are high priorities for Canadians.

• (1530)

Honourable senators, the challenge is to maintain safety and protect the environment from the many threats while continuing to promote a strong and viable shipping industry.

The bill we have before us today is tangible proof of the government's leadership and our commitment to the marine sector.

The objectives of Bill C-14 are stated clearly in Part 1 of the bill. They are threefold: first, to protect the health, safety and well-being of individuals; second, to protect the marine environment; and, third, to encourage viable, effective and economical marine transportation and commerce.

To support these objectives, a complete reform of the Canada Shipping Act was undertaken. This reform had three goals: first, to simplify the legislation by replacing outdated terminology with plainer language, harmonizing it with other regimes and taking out excessively prescriptive details; second, to make it consistent with federal regulatory policies, reducing reliance on regulations and permitting alternative approaches such as compliance agreements, performance standards, and voluntary industry codes, which are much more consistent with today's regulatory practices; and, third, to contribute to the economic performance of the marine industry by reducing prescriptive elements and the administrative burden imposed by the current legislation. This reform gives the industry the assurance it needs to increase safety and business.

Let me outline some of the provisions of this bill.

Bill C-14 delineates the areas of responsibility between the two federal departments, Fisheries and Oceans, respecting pleasure craft, and Transport Canada, respecting non-pleasure craft.

The chief registrar of all commercial vessels is given the flexibility to divide the registry into parts, including a small vessel register. This flexibility allows the chief registrar to set requirements based on the class of vessels. For example, a vessel on the small vessel registry would not necessarily be required to undergo costly tonnage measurement, nor would there be provision to register a mortgage.

Bill C-14 clarifies the shipmaster's responsibility to ensure that the vessel is adequately staffed with properly qualified and trained personnel. Also clarified is the master's authority to maintain good order and discipline on-board a vessel.

In response to stakeholders' concerns, the right of seafarers to place a lien against a vessel for unpaid wages remains in this bill.

Part 4 of this bill is primarily concerned with safe design, construction, inspection and operation of vessels, all of which are the responsibility of the Minister of Transport. Those matters relating to the safe use of pleasure craft, including requirements for operator competency, licensing and safety equipment, rest with the Minister of Fisheries and Oceans and can be found in Part 10.

Bill C-14 allows Canada to fulfil its international obligations respecting various international conventions, such as safety of life at sea and the International Safety Management Code, by allowing the department to implement these instruments via regulation.

Commitment to marine safety and protection of the environment has been reinforced by Canada's commitment to port state control. This means that whoever comes into our ports can be inspected, no matter what flag they fly. More than 25 per cent of all vessels that dock at Canadian ports are inspected, with the focus being on ships with the greatest potential safety concerns.

I want to point out clause 227, which stipulates that vessels that contravene international conventions relating to safety and the environment can be denied access to Canadian waters.

Transport Canada and Fisheries and Oceans officials have worked closely with all interested parties to ensure that the proposed legislation's pollution-prevention provisions are modern and are consistent with other domestic and international standards. The departments have also worked together to ensure that the penalties for non-compliance are effected.

Part 8 clearly identifies the responsibility of the Department of Fisheries and Oceans to protect the marine environment from the discharge of a pollutant from a vessel or an oil-handling facility engaged in the loading or unloading of a vessel.

In cases where a pollution accident occurs, the Department of Fisheries and Oceans will take the lead to ensure an appropriate response. Fisheries and Oceans is also responsible for ensuring that oil-handling facilities have oil-spill prevention plans in place and that there is an arrangement for a response with a Coast Guard certified response organization to control the consequences.

The Minister of Transportation is responsible under Part 9 of the bill for the regulation of the discharge of pollutants from vessels. This part also includes the regulation-making authority for the safety equipment that must be on-board a vessel when it is carrying pollutants.

The legislation also provides sufficient deterrents to those who would be tempted to use Canadian waters as the dumping ground for their shipboard waste.

It is clear that industry supports the departments as they move toward a brand new Canada Shipping Act.

We have heard an outline on the provisions of this bill, the compelling reasons for it and its many strengths. We have heard about the consultative process that has made this legislation possible.

Honourable senators, even though industry for the most part is in favour of the proposed legislation, some will remain in

opposition to the enforcement scheme. It is to this scheme that I would like to focus your attention.

Bill C-14 will establish a streamlined administrative enforcement scheme. It will use modern, cost-effective means to secure compliance with regulatory requirements. Transport Canada has listened to the stakeholders in respect to this enforcement scheme. Originally, the draft bill proposed an administrative penalty scheme that involved the use of assurances of compliance, tickets, administrative penalties and judicial sanctions. Some stakeholders thought that these sanctions were too strong. As a result, the bill before us makes greater use of the summary conviction process for offences, and it no longer has a ticketing scheme.

Honourable senators, the Department of Transport is committed to work with its partner agencies to ensure that the enforcement measures contained in this bill are applied consistently. This bill represents a conscious effort to hold all individuals who are responsible for non-compliance accountable for their actions, including corporate leaders. No one should be able to hide from personal responsibility behind the corporate screen.

The proposed system contained in this bill is fair. It provides for a more efficient, less costly alternative to the courts. It provides for an alternative to financial sanctions through the use of assurances of compliance.

This system is based on the successful program of administrative penalties developed in the Aeronautics Act, the Agriculture and Agri-food Administrative Monetary Penalties Act and the Competition Act.

In addition, the administrative system contains safeguards for those that become subject to enforcement measures. A fair and impartial review process by an independent adjudicator is also established under this bill.

The Bill C-14 enforcement scheme employs a graduated approach to non-compliance. This graduated approach provides the government with the flexibility needed to apply the most suitable enforcement response at a lower cost to all parties.

Honourable senators, I now turn to an aspect of the economic regulation of shipping and navigation, namely, the Shipping Conferences Exemption Act.

Amendments are found in Part 15 of Bill C-14. Honourable senators, Part 15 addresses an important aspect of transportation supporting the Canadian economy, the movement by ship of Canada's overseas containerized trade. A shipping conference is a group of ocean shipping lines acting collectively to set the rates and to offer services on specific trade routes. Shipping conferences are recognized throughout the world and contribute to reliable service and stable rates.



• (1540)

Many of Canada's trading partners, such as the United States, Europe, Australia and Japan, accommodate conferences through special legislation. Recently, they have reviewed their conference legislation and concluded that, while it should be retained, more competitive provisions can be accommodated.

The Shipping Conferences Exemption Act exempts shipping conferences from certain provisions of the Competition Act and sets the rules for their operations. Amendments are now required to keep Canada's shipping conference legislation in balance with Canada's major trading partners. The government must be mindful of the need for a balanced approach to conference legislation. Radical anti-conference measures are a departure from compatible, international rules and could result in unfavourable repercussions for Canadian industry and Canadian ports.

Honourable senators, the amendments will encourage a more competitive operating climate within shipping conferences, will provide adequate flexibility for shippers in dealing with conferences, and will streamline the administration of the act.

More specifically, during the review of the bill at the Standing Committee on Transportation and Government Operations and as a result of additional consultations with Canadian shippers, a motion to amend the clause of the bill on service contracts was adopted to clarify that the service contract shippers entered into with individual conference lines will not be subject to interference from the shipping conference.

Honourable senators, the amendments will result in Canadian legislation being comparable with the law in the United States. Shippers will benefit from the injection of greater competition into the practices of conferences, while conferences will continue to have a limited exemption under the Competition Act.

Honourable senators, politics is the art of the possible. We have practised that art, balancing the needs and concerns of Canadians with different interests, protecting the environment and those who work at sea. The result is an effective piece of legislation that will replace an act long overdue for renewal and give Canadians the modern, efficient framework we need for the 21st century. I urge honourable senators to support this legislation.

**Hon. Nicholas W. Taylor:** Honourable senators, I have a couple of questions. First, we are increasingly using dredges. In the past, dredges were used to clean out a harbour, but now they are being used on inland lakes in Canada, particularly in Western Canada where the water contains silt because of the farming patterns of the last two or three generations. Will dredges fall under the Ministry of Transport? If my honourable friend does not know, I can wait for a response. This is not critical.

**Senator Callbeck:** Dredges are not covered under this particular piece of legislation.

**Senator Taylor:** My second question references the hobby sailor. In the U.S., one cannot dump effluent from a boat's sewage tank; yet dumping is allowed in Canadian waters. In Western Europe, one cannot empty a sailing boat either, except maybe in the Mediterranean, in a few areas off Turkey, Egypt and Israel. Canada is one of the last countries where one can dump one's holding tank. Has that practice been changed at all?

**Senator Callbeck:** Yes. There are measures in this legislation to deal with that matter, making the rules more strict.

On motion of Senator DeWare, for Senator Forrestall, debate adjourned.

## CANADA TRANSPORTATION ACT

### BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Kirby, seconded by the Honourable Senator Mahovlich, for the second reading of Bill S-19, to amend the Canada Transportation Act.—(*Honourable Senator Poulin*).

**Hon. Marie-P. Poulin:** Honourable senators, I listened carefully to the speech of our colleague Senator Michael Kirby when he tabled Bill S-19. This bill would amend the Canada Transportation Act and, when implemented, would provide guidance on how the best interests of the air-travelling public could be served. Senator Kirby is to be lauded for bringing forward this measure. Bill S-19 would compel domestic and foreign air carriers to file information affecting the public interest, such as flight delays, mishandled baggage and over-sales.

Once enacted, this bill would provide information that could lead to improved service to air passengers who, as anyone in this chamber knows, have suffered undue inconvenience in their travel plans because of airline practices.

[*Translation*]

Honourable senators, we all care about the reliability of Canada's air transportation system. Bill S-19 seeks to improve services provided to passengers.

When a passenger chooses a flight to reach a destination, he or she expects, even if the weather does not co-operate, to leave on time from the planned point of departure. He or she also expects to arrive at the scheduled time and, finally, he or she expects to get there with his or her baggage. If the airline company does not meet these three expectations, the passenger pays a professional and/or a personal price, in addition to the airfare.



Honourable senators, under Bill S-19, all air carriers in our country would be required to file reports on matters affecting the public interest. It is essential to improve the reliability of services to passengers, at a time when new technology is helping to improve the effectiveness of all industries, and at a time when air transportation is becoming an essential mode of transportation in the context of globalization.

[English]

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

#### REFERRED TO COMMITTEE

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Robichaud, for Senator Kirby, bill referred to Standing Senate Committee on Transport and Communications.

[Translation]

### THE SENATE

#### MOTION ON PROPOSED CHANGE TO RULE 90 ADOPTED AS AMENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Gauthier, seconded by the Honourable Senator Fraser:

That the *Rules of the Senate* be amended, by adding after Rule 90, the following new Rule:

90.1 Within 90 days of the presentation of a report from a select committee, the government shall, upon the request of the committee, table a comprehensive response thereto.—(Honourable Senator Lynch-Staunton).

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I congratulate Senator Gauthier for having brought forward a motion asking the government to table a comprehensive response to committee reports, once they have been presented.

A careful reading of Senator Gauthier's motion, however, with his agreement, indicates that it might be improved with an amendment.

[ Senator Poulin ]

[English]

• (1550)

As the motion presently reads, although it is well-intentioned, I do not think it goes far enough. It says, "Within 90 days of the presentation of a report from a select committee, the government shall, upon the request of a committee..." I do not think that the committee itself should have the authority to ask the government to comment on a report the Senate has not voted on. I do not think the government would be very pleased to see that only a few senators would impose on it such a project of replying to a report that the Senate itself has not had a chance to debate and vote upon.

#### MOTION IN AMENDMENT

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I have discussed this with Senator Gauthier, and he has agreed that the following amendment would meet his objectives and would show the government the seriousness of the change in the rules that he is proposing.

I move, seconded by Senator Gauthier, that the motion be amended to read as follows:

Ninety days following the passage by the Senate of a select committee's report, the government shall table, at the Senate's request, a comprehensive response.

We are substituting "Senate" for "committee," and it is a report that the Senate has approved that would be the object of a referral to the government for a response.

I also think, out of courtesy to the Rules Committee, should this motion as amended be approved, that it should be referred to the Rules Committee for comment and suggestions if need be before it is incorporated into our rules.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the amendment?

[Translation]

**Hon. Eymard G. Corbin:** Does Senator Lynch-Staunton believe that this chamber may impose an obligation on the government?

**Senator Lynch-Staunton:** No, I do not. However, it is a request which, if approved by the Senate, the government would be ill-advised to refuse.

**Hon. Jean-Robert Gauthier:** Honourable senators, the inspiration for this motion came from my experience in the House of Commons. I have copied down almost word for word Standing Order 109 of the House of Commons. I will read it.

Within 150 days of the presentation of a report from a standing or special committee, the government shall, upon the request of the committee, table a comprehensive response thereto.

That is what the Standing Orders say. I have used this standing order, and I think it is useful. One thing we must not lose sight of is that the Senate does some wonderful, serious and productive work in committee. When a committee tables a report in the Senate, this report may be debated. I accept Senator Lynch-Staunton's proposed amendment. I would like the government, after 90 days or 150 days, to table a comprehensive response to the committee's report.

I neglected to raise a number of points yesterday when I opened the debate on this motion. I will do so when the committee considers the motion. I am aware of the problems which exist. Senator Lynch-Staunton's amendment broadens the scope of the request. The government must take this seriously and table a comprehensive response within 90 or 150 days.

When I say 90 or 150 days, some people may wonder whether these are calendar days or sessional days? I am speaking of calendar days.

In the event that Parliament is prorogued, would the government be, or feel, obliged to table a response? I think that it would, but we will discuss this in committee, and that is where we will give thought to amending the motion after serious debate. Basically, I think that this is an important issue. If we wish to enhance the value of the Senate's work, we must make that work known. The government must know that we have ideas, which are important to us.

This request is reasonable. It is entirely within the spirit of a bicameral Parliament. The Senate is an important chamber, and the government should be required to respond seriously to the requests of the Senate.

[English]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I should like to recommend to the house a manner in which we might consider proceeding on this. If the question is put, the amendment of Senator Lynch-Staunton would be to amend the main motion. We could then not call the question on the main motion but allow a motion to be put forward to send the motion as amended to the Rules Committee.

[Translation]

**Senator Corbin:** Honourable senators, Senator Gauthier has said this measure was inspired by the rereading of the *Standing Orders of the House of Commons*. I want to reread my question to the Leader of the Government in the Senate on January 31 of this year, and I quote:

Honourable senators, I have a question for the Leader of the Government in the Senate. Surely, the leader will have fresh in her memory the work we did on the committee over which she presided, the five-year review on palliative care.

I introduced an amendment to the committee report in the last session of Parliament (that is the preceding Parliament). The amendment was adopted at the same time as the report, in which we called on the Minister of Health to react within six months to the committee's recommendations.

I will spare you the rest of the question. It was not the first time I had raised this matter in the Senate. I think that my honourable colleagues and Senators Gauthier and Lynch-Staunton have sufficient reason for wanting such a proposal to be incorporated into the *Rules of the Senate*.

• (1600)

The government's fate is not dependent on this chamber. If, following a unanimous and collective request from the Senate, the current government did not respond to the report that we are presenting in this chamber, it would do so at its own risk. I think this is what Senator Lynch-Staunton means.

Strictly speaking, the government probably does not have to respond to our reports. However, I know for a fact that Senate reports are carefully examined by government authorities, public officials and members of the general public who take an interest in these issues. It remains to be seen whether the Committee on Privileges, Standing Rules and Orders, to which we are referring this issue, will produce a report and require the government to respond to it. Personally, I doubt it. From a legal and constitutional point of view, I do not think that the government is required to respond, but I believe it will finally want to do so. It should have done so a long time ago.

This is a contradictory situation, because the Leader of the Government in the Senate, Senator Carstairs, was the Chair of the committee that reviewed palliative care. She is now responsible, at the Department of Health, for the whole palliative care issue.

The report was submitted in June. Six months have gone by and we have still not had a reaction from the department. We all know that it is ultimately the department, headed up by the minister, which will react to our reports.

I hope that not only will we have a response within a reasonable time to the Senate's decision in the last Parliament, but that the government will want to react to all the Senate's reports. I approve of this initiative.

[English]

**The Hon. the Speaker pro tempore:** Is the house ready for the question on the motion in amendment?

**Hon. Senators:** Agreed.



**The Hon. the Speaker *pro tempore*:** It is moved by Senator Lynch-Staunton, seconded by the Honourable Senator Gauthier, that the motion be amended to read as follows:

90.1 Ninety days following passage by the Senate of a select committee's report, the government shall table, at the Senate's request, a comprehensive response.

Is it your pleasure, honourable senators, to adopt the motion in amendment?

**Hon. Senators:** Agreed.

Motion in amendment agreed to.

REFERRED TO COMMITTEE

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, to my understanding, we are actually changing the rules. It should be indicated to the Rules Committee that we want it to study this matter. It is the responsibility of the Rules Committee to give us indications on what rule changes we should entertain. If we do it separately from the approach to the overall rules, we could get ourselves into a sticky situation.

Honourable senators, I move that the wording of the motion, as amended, be referred to the Standing Committee on Privileges, Standing Rules and Orders for consideration and for report at the earliest opportunity.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

## DEFERRED MAINTENANCE COSTS IN CANADIAN POST-SECONDARY INSTITUTIONS

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Moore calling the attention of the Senate to the emerging issue of deferred maintenance costs in Canada's post-secondary institutions.—(*Honourable Senator Andreychuk*).

**Hon. A. Raynell Andreychuk:** Honourable senators, I wish to add my words to this inquiry initiated by Senator Moore calling the attention of the Senate to the emerging issue of deferred maintenance costs in Canada's post-secondary institutions.

I have spoken in this chamber at length on at least three occasions as to the need to continue to reinforce our

post-secondary education in Canada. As senators will recall, it was sometime in 1995 that Senator Bonnell initiated an inquiry that we look into post-secondary education. At that time, it was difficult to get many of the parliamentarians in Canada, and other people in Canada, to focus on post-secondary education. The Senate again displayed that its committee work is extremely important because by the time we finished our study and filed it in December 1997, post-secondary education had caught the attention of many groups across Canada and, in fact, the government of the day.

I do not want to go over that report in any great detail, but I think it fundamentally touched the crisis that students faced in post-secondary education, as the costs had accelerated in a manner that had not been seen before. There was great concern by the Post-Secondary Education Committee that students were having difficulty continuing their post-secondary education and that the quality of education and the availability of education to our students was in general jeopardy.

At the same time, we brought to the attention of the government and other senators that research in Canada was behind and, due to cutbacks and other issues in Canada, post-secondary education was not getting attention. We, as a country, who prided ourselves as being exporters of innovation and service technology, were in fact falling behind other OECD countries and were not leading as we had in the past. There was considerable concern that research was being neglected. There was considerable concern that students were not being given the type of international education with which they could meet the demands of the global economy and the more globalized world.

Honourable senators, I am pleased to see that our report received the full endorsement of the Senate. It is too bad that the government did not reply in whole to our report. However, I do see an inkling that the government paid attention to it because from time to time we see initiatives. As we heard earlier today, an innovation fund is being set up to deal with some of the research and technology crises that we are facing.

My concern is that we continue to deal with post-secondary education on an ad hoc basis. I believe it is time that the government approached the issues and the problems facing post-secondary education in a more systematic way. Therefore, I am very pleased that Senator Moore called attention to the deferred maintenance costs of Canada's post-secondary institutions. It seems to me that when the cutbacks came, the first things that was put on the back burner were repairs to institutions and purchases for our libraries that were absolutely necessary.

As a committee, honourable senators, we travelled across Canada. We were still being told by some government officials that there were still some efficiencies that could be made in the institutions and that there was sufficient money to attend to the ongoing operating costs.



• (1610)

However, I think the committee was convinced by the well documented presentations of university administrators and student organizations such as CAUT and AUCC that all efficiencies had been attacked and that the crisis was beyond that point. We were told that unless there was a systematic study and an injection of funds into post-secondary education, post-secondary education would no longer exist in the way that we enjoyed it.

I should like to refer to our December 1997 report at page 17. I will not go through the statistics because it is important that those who will be following this issue go back to our report and to the supporting material, of which there was much.

At that time, the committee unanimously said that universities and colleges across Canada have responded to the dwindling commitment of government resources in a number of ways. They have become more efficient and have eliminated a lot of waste from their operations. The operating costs of universities in the 1980s, for example, fell by 15 per cent on a per student basis. Since then, however, operating costs per student have risen, influenced by the costs of increasing salaries for a maturing professoriate and of early retirement packages to reduced faculty complements.

Post-secondary institutions have also responded to declining government support by postponing capital projects and by reducing the replacement and repair of facilities as well as routine maintenance to the bare minimum. The net result has been the undeniable rundown of the physical infrastructure of universities and colleges.

The intellectual infrastructure has suffered as well in constant dollars per student. By 1993, library expenditures had fallen by 20 per cent from their peak in the early 1970s. Therefore, the special committee recommended that the federal government begin negotiations with the provinces on a joint program to arrest the accelerating deterioration of the fiscal infrastructure and of libraries, colleges and universities, that the institutions be asked to maintain an up-to-date list of their overdue maintenance and renovation needs, and that the two levels of government commit funds to these projects at the earliest possibility.

Honourable senators, the Canadian Association of University Business Offices has continued to document the shortfall. In fact, the report of the Canadian Association of University Teachers, to which Senator Moore referred, is another example. The evidence is clear that the infrastructure is in need of repair. The moneys that have been allotted have been used to stem the decline, but they have not met the needs of the universities.

Some universities are concerned that the money that is being injected through these programs and through the initiatives that we heard about in the innovation fund are going for new research

facilities, new technologies and new innovative centres. While we commend the government for providing money to put us on the cutting edge of new technologies, the universities need sustaining money. Money going to applied research is not sufficient. Money is needed to sustain the university base and to sustain basic research.

We do not want to be in a position of having some highly technical specialities while having lost the *raison d'être* of universities, which is to build minds and capacities in our young people to enable them to meet the challenges of the future.

The approach of most universities to education is to expand minds one student at a time. To do that, a liberal education has been the hallmark of the Canadian system, and that must be reinforced. We cannot say that only computer science is important. We must ensure that all the other humanities and all the basic programs are also sustained. I do not believe that there has been a systematic study of university funding to ensure a balance between applied research and basic research and to ensure that new technologies are weighed against traditional, basic programs. We must consider the type of students attending particular institutions and their ability.

When we did our study some years ago, we noted that literacy was a problem in the university system and that we needed to reinforce programs for incoming students. We recognized the fact that many Aboriginal peoples in the West were entering our university systems. It is imperative that they be given opportunities. However, some university practices and procedures did not fit them very well. Therefore, we needed to review some of the basic entrance requirements and funding requirements for these students.

I want to emphasize that increasing funding in innovative areas is fine, but it must be done across the spectrum of universities. We must consider how that can be done.

I know that in Saskatchewan some moneys returned from the federal government to the provincial government did not translate immediately into funds in the hands of the universities. We must ensure that the governments work cooperatively to sustain universities.

At page 59 of the report to which I referred earlier we said that overall Canada's post-secondary education network is adjusting remarkably to the rapid changes with inadequate resources. This process is not tidy, but chaotic and stressful, and it is being driven up more by grass roots than by top-down forces. I wish to underscore that point in supporting this inquiry. Good minds across Canada have found ways to sustain universities. However, is this good enough in this century if we want to be competitive and produce students who can meet the challenges? Although we need a grass roots-up approach, we also need to take a top-down systematic look at this issue.

In 1997, we did not conclude that there was a crisis yet in our post-secondary system, but we did find that there were good reasons for concern and action. I believe that the crisis has now arrived. Statistics show that our attempts to redress this problem have not been successful in any corner of Canada.

I noted that in two Throne Speeches the government addressed post-secondary education, innovation and research, but at that time talked about centres of excellence and partnering to see how industry could collaborate with universities and governments to meet the needs of the 21st century. The difficulty at that time was that the corporate money was tied to federal government money.

• (1620)

This almost precluded a province such as Saskatchewan, which has a very small corporate base from which to draw. Naturally, those funds seemed to go to what, in the government's terms, were the centres of excellence: Toronto, Montreal, perhaps Vancouver, Calgary and Halifax.

We pointed out in our report that there should be a different definition of centres of excellence. Universities across this country have brought to each one of their communities a centre of excellence.

I think of Walter Scott, the first premier of Saskatchewan — and I might note he was a Liberal — and his foresight to locate a university in Saskatchewan in 1911. The voice from Central Canada was to scoff at him, to say it was premature and unnecessary. However, the foresight to put a university in Saskatchewan targeted to agriculture created and sustained the viability of our communities. Many researchers who began in Saskatchewan were world renowned and have moved on to some of the best universities around the world. Centres of excellence should exist in each one of our communities.

I see the same kind of intellectual curiosity and capability in the student and professorial bodies of our smaller universities.

**The Hon. the Speaker *pro tempore*:** Honourable Senator Andreychuk, your speaking time has expired. Are you seeking leave to continue?

**Senator Andreychuk:** Yes, I would request leave to continue. I am nearly at the end.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

**Senator Andreychuk:** I make the point seriously that all universities systematically look to the government for support and reject the idea that there is a need to reinforce the major centres at the expense of the smaller ones.

Honourable senators, universities bring vibrancy to our smaller centres in the fine arts, education and the intellectual base. This

improves the quality of life of the citizens in these centres and is probably more important than even in our larger centres.

I can use the example of the Saskatchewan Indian Federated College. This institution is not based in one of our major centres. However, the fact that there is a First Nations university controlled by the Aboriginal peoples in Regina has brought a wealth of education to the Aboriginal community, has promoted understanding between the Aboriginal and non-Aboriginal communities, and has gone a long way toward bringing these communities in Saskatchewan together. It is a world-class Aboriginal institution that has become a model in South America, Central America and elsewhere. I should like to underscore that.

I also wanted to make a final point. All of us must take some time to understand what our universities means to the lives of those of us who live in Canada. Universities promote intellectual debate and intellectual curiosity. If I can use our Senate committees as an example, when we study a topic, we try very hard to ensure that we hear from witnesses across Canada. Inevitably, a wealth of information and knowledge comes from university professors, research students and Ph.D. graduates from across this country. When our reports are framed, they speak to all of Canada from all of Canada. That process could not take place if we did not have a viable university base.

I have wandered a bit from the topic. I am sure Senator Moore will forgive me, but I wanted to associate myself in this inquiry with his call to study what he calls the emerging issue and what I call a longstanding issue. Many senators have spoken to this issue. I hope that we can do something to call attention to a more systematic way of addressing the long-term viability of our universities.

On motion of Senator Gauthier, debate adjourned.

## AGRICULTURE ISSUES

### INQUIRY—DEBATE ADJOURNED

**Hon. Jim Tunney** rose pursuant to notice of May 15, 2001:

That he will call the attention of the Senate to Canadian agricultural issues, specifically grain, dairy and hemp.

**Hon. Senators:** Hear, hear!

He said: Honourable senators, thank you very much. You might consider holding your applause until you know whether you are disappointed or not with my maiden speech.

I am a fourth generation farmer. I cannot tell honourable senators how privileged I feel at this time and in this presentation to commit to making every effort toward the well-being and the future prosperity of agriculture.

I am always asked the question: Do I own Tunney's Pasture? The answer is, no, I do not.



**Senator Graham:** Not yet.

**Senator Tunney:** It is a fact, however, that my great-uncle did own it, starting in the year 1838. He was a lumber baron there for many years.

Honourable senators, food is the most important commodity in the world and our very existence depends upon it. That is why our farmers play such a pivotal role in putting food on the tables of the world, and, in doing so, bringing true value to the Canadian economy.

We are, however, faced with the reality that there are fast becoming so many problems that fewer people know how to grow environmentally friendly food or know how to grow it under our extreme and diverse conditions, as compared to many other countries.

With the current economic hardships encountered today by the grain and oilseed producers across the country, both the federal and provincial governments are faced with the daunting task of designing assistance programs that are both meaningful and trade-neutral.

Statistics released by the Urban Renaissance Institute, a division of the Toronto-based environmental watchdog Energy Probe, indicate a grim scenario. From 1990 to 1999, the federal and provincial governments contributed \$3.55 in subsidies for every \$1 earned by Canadian farmers.

Support and protection for farmers in developing countries now exceeds \$360 billion. In 1999, American wheat producers received 46 per cent of their gross revenue from subsidies. The EU accounted for 58 per cent and Canada came in at 11 per cent.

In Canada, we generate approximately \$95 billion a year and employ roughly 1.9 million people. We have reached the \$23-billion trade level. Agriculture and agri-food make up 25 per cent of our trade surplus. Only 10 per cent of our total disposable income goes to buy groceries. In the U.S., it is 10.4 per cent; in Australia, it is as high as 14.1 per cent.

• (1630)

This morning, the Standing Senate Committee on Agriculture and Forestry heard a witness from Stettler, Alberta. He made two dramatic statements. First, he said that a waitress in a hotel or a restaurant receives a gratuity that exceeds the total amount that a farmer receives for all the produce that the customer ate after having ordered it from the menu. Second, he told us about a neighbour of his who is a fourth generation farmer. The farm has been in his family since 1906, but the next generation will probably be dispossessed unless prices turn around.

Another matter that bothers me to no end is that producers are the only people anywhere in the food chain who are price takers and not price determiners. They take the price for their food, for their produce. The transporters set their rates. The processors

have their margin. The distributors and the retailers know how much they need to turn a bottom line.

In a recent presentation to the Standing Senate Committee on Agriculture and Forestry, Mr. Ken Ritter, Chairman of the Canadian Wheat Board, stated that:

...when it comes to world agricultural trade issues, the most important factor to fairer trade is a level international playing field. Export and domestic subsidies continue to distort world grain production, subsequently depressing world prices.

I share his view. I believe that the WTO is and should be our vehicle to lead to freer and fairer trade.

Honourable senators, the Canadian Wheat Board operates on behalf of farmers when selling their grain, which is why in 1998, after much criticism, the Wheat Board had farmers in 10 districts across the Western Canada elected to represent them. They, along with five government appointed directors, now comprise the board of directors. Their aim is to keep in tune with the farmers' needs, and they are held accountable for the subsequent actions. They are hoping to be participants at the upcoming international trade talks in November in Doha, Qatar. I believe it would be an excellent forum for the Wheat Board members, our Canadian representatives and our Canadian farmers to participate in these discussions.

Honourable senators, we are faced with increasing challenges in production and trade. Grain and oilseed producers across Canada are experiencing extreme difficulties. The ability to share our view on the role of Canada's trade and trade policy, in particular trade of grain and the WTO regulation of same, would be, in my opinion, most valuable.

While greater pressures are being applied for supply and demand, and more and more we are seeing an excessive use of fertilizers and pesticides, this can and does leave the soil continually exhausted. Extensive studies have been conducted on the short- and long-term results of these effects.

As reported by Dr. Robert Sopuck, Director of Policy for the Delta Waterfowl Foundation, they are trying to encourage farmers to work their best land and set some of the less valuable land aside for conservation. Undoubtedly, this would promote biodiversity and improve water quality.

We must also take into account that even though Canada has enjoyed a worldwide and consistently high reputation for quality and safety of wheat and barley, the industry is encountering increased risks and pressure related to the safety of food. Some examples include tests for fusarium, which is a head blight in wheat, as well as ergot and mycotoxins, to name only a few. We are also faced with an extremely complex issue of biotechnology and, more specifically, the introduction of GMOs, or genetically modified organisms. There are currently non-transgenic varieties of wheat or barley registered for commercial production either in Canada or elsewhere.



My copy of *The Western Producer* came to my office early this morning. In it was a report that GMO-infected grain is now being intermixed with the non-GMO grain. Everyone knows that the European buyers will not accept it after it is tested. This is a very serious problem. I see this as a problem of multinational corporations. The one which is most upfront with this issue controls not only the chemical industry but the seed industry as well. They have a monopoly in those areas. Unless there is some kind of governmental control, they will get us into all kinds of trouble.

A recent article in *The Western Producer* indicated that Monsanto Canada has discovered a gene in one of its GMO canola crops that should not be there. It was found in Quest canola, marketed by the Saskatchewan Wheat Pool and Agricare, which has already been sold to approximately 3,000 farmers. I happen to know that they have been scrambling to try to recover that canola before the farmers plant it in the ground. The latest report this morning says that they have had some success in recovering it. According to Monsanto spokesperson Trish Jordan, the gene was never intended to be in varieties for farmers.

Honourable senators, I want to turn to another commodity, one that is of prime interest to agriculture and Canadians. I refer to hemp. The issue is of extreme interest to agriculture. It is an industry that holds great promise. However, in my view, it is an industry that does not have a federally regulated long-term plan, nor does it provide government assistance and legislation that would bring in orderly regulations while offering an adequate processing and marketing plan. We must also be looking to garner a more secure — not only Canadian — worldwide market for this most versatile commodity.

Much time and effort has been expended in discussing the industry, but not in the development of long-term government-approved programs aimed at the producers and their specific needs and requirements. We must go beyond looking solely at the timing and the planting of seeds. We must look at what is being done to produce the hemp once it is ready for market. Many producers have barns filled with bales of rolled fibre and tonnes of high-quality seed unsold simply because of an improper marketing strategy.

Friends of mine, Gord and Cathy Wilson of Campbell's Cross, Ontario, who are in our gallery today, have 500 bales of hemp in perfectly good condition. It is a valuable commodity, if handled properly. They have grown this crop over the course of two years. They have had to stop growing because they cannot accumulate year-after-year production with no hope or no possibility of buyers or an industry that will further manufacture this crop.

• (1640)

They have been faced with the matter of applying for and purchasing a permit from the federal Ministry of Agriculture and yet another one from Health Canada. Before they ever decide that they can grow the crop, they must cross a couple of hurdles. Not only must they do that the first year they want to grow hemp, they must do the very same thing the next year as if they were brand new growers.

Honourable senators, the inability to receive proper and timely licensing is a major factor. There must be a simpler way for this process to be accomplished, rather than having individual licence requirements for both the purchase of seeds and the growing of the crop. The rigorous enforcement mechanisms built into the regulatory framework are, for the most part, a hindrance and are certainly a deterrent to many growers or potential growers.

In conclusion, I referred in my opening statement to the development of agricultural processing and marketing plans. I will say much more about this issue in the days to come.

Honourable senators, I am a dairy farmer, as you probably have heard.

**The Hon. the Speaker:** Before you go on, Senator Tunney, I regret to inform you that your speaking time has expired. Are you asking for leave to continue?

**Senator Tunney:** Yes, I would be pleased to do so.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Tunney:** Thank you, honourable senators.

Canada has the most effective and competitive program for dairy and poultry production of any country in the world. It is called supply management, and it works to the benefit of all, from producers to consumers. Producers are assured of a fair price for the product only if they are producing a highly efficient and a very safe product. I assure honourable senators that all players are the beneficiaries of the work and the foresight of a former Minister of Agriculture and a former member of the Canadian Senate. His name is the Honourable Eugene Whelan, and he is in our gallery today.

**Hon. Senators:** Hear, hear!

**Senator Tunney:** Honourable senators, the idea of Canadian supply management is a valid marketing system. It is, in my opinion, imperative that the federal government seek international recognition. It is equally important that the round of negotiations recognize that the supply management programs do in fact meet the objectives of the WTO in the provision of a stable and profitable dairy industry. Our dairy farmers continue to play a significant role in Canadian agriculture and contribute tremendously to our balance of payments.

The message is being delivered that governments must support the existing supply and policy. Supply management, while meeting the objectives of the WTO, provides a stable, comprehensive and competitive industry. Many people wrongly think that supply management is a licence for the producers to print money. It is not so, and another time I should like to go into that matter. It is true that if one buys a basket of dairy products in the U.S. today, one pays more for that basket than the identical products purchased here at one of our supermarkets.

Honourable senators, I have had the good fortune to work as a volunteer in the dairy industry in Russia and Ukraine for several years. It is an experience that most Canadians would not have. The rewards are in seeing how a small effort can make such a large difference and dramatically increase the production of milk, even in a period of six weeks to two months. I have been there seven times doing this work.

This result comes about by the treatment of infection, mostly mastitis, by the improvement of feeding practices and by the improvement of their milking technique. They do not know that putting a milker on a cow and leaving it on for 12 to 14 minutes has a deleterious effect on the cow, and that it causes the mastitis. The cow is giving four to six pounds of milk, and 20 to 30 seconds after the milker goes onto the cow, the cow is milked out. Our Canadian cows are giving an average of 80 pounds of milk a day, and the milkers can do that in three to four minutes.

Russian and Ukrainian milking equipment is of 1930s vintage and must be replaced. Canada could play a large part in helping to develop agricultural infrastructure. If agriculture in Ukraine and Russia could be improved and if their economies could be brought up to some semblance of prosperity, Canada could be the beneficiary of 50 years of trade with two of the very best trading partners in the world.

There are 200 million people in Russian and Ukraine, and they live in total and abject poverty. After working with these wonderful people, I dare to predict a great future for them.

**Hon. Senators:** Hear, hear!

**Hon. Marie-P. Poulin:** Would our honourable colleague, Senator Tunney, accept a few questions?

**Senator Tunney:** Yes, I would be happy to do so. I just hope that I know the answers.

**Senator Poulin:** Honourable senators, I wish to compliment Senator Tunney for an excellent presentation to this chamber. Few issues can be of more direct interest to Canadians than our ability to provide top-quality foodstuff at reasonable prices.

The senator touched on many important topics, and I should like to hear from him on what appears to be a contradiction. There is an apparent excessive use of fertilizers, while at the same time fertilizer cost is escalating rapidly. In other words,

would high cost not lead to diminished usage? What are the alternatives, Senator Tunney?

**Senator Tunney:** I thank the honourable senator for the question.

Honourable senators, this was a subject of discussion at our Agriculture Committee meeting this morning. We were told, and it was not a surprise to me, that because of the very high cost of natural gas, of which the fertilizer industry is a very large user, the cost of nitrogen fertilizer has increased by 300 per cent since last August. What does a farmer do when faced with that kind of a cost in addition to the almost tripled cost of fuel for his machinery and the need to get as much production from his land as possible?

• (1650)

If the value of his wheat, his corn, his canola, his soy increased at the same rate as his input costs, he would probably say there was no problem. The problem really is this: What happens to our markets when we have to add another 100 per cent to the wheat that we want to ship overseas to our world customers? This is the real dilemma.

I wish that the farmers in the Prairies and elsewhere, of course, had the same bottom line as the gas and the oil companies. I am afraid not.

**Senator Poulin:** The honourable senator's speech also reported on the situation in the dairy industry. I should like to acknowledge his expertise in this area. While there has been great success in the supply management of dairy products, I wonder, though, how this relates to the fact that supply management works when imports are controlled in an era of free trade. What mechanisms exist to rationalize the two?

**Senator Tunney:** This is another conundrum for many of the people with whom I interact. In trade, Canada has always had a foreign market for skim milk powder. We never did sacrifice price to effect those sales because the demand was there from Iran, Iraq, Saudi Arabia and the many African countries and Mexico. Mexico was, for a long time, the largest buyer of Canadian skim milk powder. Our powder went on the market because it was absolutely proven to be the purest in the world. When I say that, I am referring to the absence of any antibiotics in that milk powder.

Many people do not pay much attention to the fact that Canada and the U.S. have always had a good trading relationship in dairy products — not fluid milk, of course; it is a perishable product. Canada makes 108 different varieties of cheese. The U.S. produces a much smaller variety of cheeses, but they make a much larger volume. Canada and the U.S. have had a trade agreement with quotas on the import and the export of dairy products for years and years. Usually, both countries fill those quotas.



There was never a problem until the U.S. tried to exceed the quota. They started doing that, believe it or not, by adding rock salt to skim milk powder and shipping it in here. Why? They used 51 per cent rock salt and 49 per cent skim milk powder because, under the WTO, which was the GATT, anything with less than a 50 per cent dairy ingredient could be shipped in here. They used rock salt so that, as soon as it got here, the rock salt out could be sifted out and sent back to the U.S. That salt would be mixed again with skim milk powder for the next shipment.

Therein lies the problem of a country, in its greed, trying to find ways around rules. You may or may not know right now that the U.S. and New Zealand are taking Canada before the WTO on the matter of maintaining exports to our traditional country buyers that we have always had. That is a not-so-brief outline of the situation.

**Hon. A. Raynell Andreychuk:** Honourable senators, I, too, want to compliment Senator Tunney for his presentation and his interest in agriculture, an interest that is very welcome from the West.

We were also fortunate to hear Senator Tunney at the Foreign Affairs Committee speak on the Russia-Ukraine situation. It was very helpful.

In the more than 20 years that I have followed this, I have been puzzled by the fact that with respect to GATT and WTO our arguments vis-à-vis continuing our marketing system and our Canadian Wheat Board have not been accepted by our European colleagues or the Americans.

At each round of trade talks, we have not been successful in moving the Europeans from their position. They argue that the Canadian Wheat Board represents a subsidy and that unless we are prepared to remove that impediment they will not negotiate any real meaningful movement of their positions.

Senator Tunney is an expert in this field. I hope he is in a good position to get the ear of the government.

Can the Honourable Senator Tunney tell us what we should be doing differently in our negotiations with the Europeans in this area if we wish to be more competitive and to maintain the markets that we have?

**Senator Tunney:** One must distinguish between the wishes of the governments and the wishes of the producers. That is often the case. Do not limit this to agriculture nor to dairy. The American dairy farmers are jealous of our system. Each time they lobby Washington for our system, they are turned down. If the Americans were the fathers of supply management, the story would be different. However, they will not give us credit for the idea of supply management or a control on production.

Supply management does two things. First, it guarantees a supply of absolutely high quality. It also guarantees the absence of costly and vicious surpluses.

The matter in Europe is somewhat different. The Europeans have enough population to absorb all of their production. We never did sell skim milk powder or whole milk powder or condensed milk into Europe. We probably never will. We never should. They should always be self-sufficient. Our real problem is with the U.S. and particularly with New Zealand.

On motion of Senator Poulin, for Senator Sparrow, debate adjourned.

• (1700)

## CHIEF ELECTORAL OFFICER

### ANNUAL REPORT—REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, before calling on Senator Robichaud and reverting to Government Notices of Motions for purposes of the adjournment motion, I should like to draw to the attention of honourable senators that earlier today, under Tabling of Documents, we tabled the report of the Chief Electoral Officer pursuant to section 72 of the Privacy Act.

For purposes of the *Journals of the Senate*, I draw to the attention of honourable senators that that legislation requires such a report to be referred to the committee designated or established by Parliament for purposes of section 75 of the Privacy Act. Section 75(1) indicates that the matter is to be referred automatically to the appropriate committee of the house, either the other place or this place. In the case of this place, the committee to which it will be referred, and this will be reflected in our journals, is the Standing Senate Committee on Legal and Constitutional Affairs.

[Translation]

## ADJOURNMENT

Leave having been given to revert to government notices of motions:

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Tuesday, May 29, 2001 at 2 p.m.

**The Hon. the Speaker pro tempore:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until Tuesday, May 29, 2001, at 2 p.m.



**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(1st Session, 37th Parliament)**  
**Thursday, May 17, 2001**

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-2	An Act respecting marine liability, and to validate certain by-laws and regulations	01/01/31	01/01/31	—	—	—	01/01/31	01/05/10	6/01
S-3	An Act to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts	01/01/31	01/02/07	Transport and Communications	01/05/03 amended 01/05/09	3	01/05/10		
S-4	A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	01/01/31	01/02/07	Legal and Constitutional Affairs	01/03/29 + 1 at 3rd	0	01/04/26	01/05/10	4/01
S-5	An Act to amend the Blue Water Bridge Authority Act	01/01/31	01/02/07	Transport and Communications	01/03/01	0	01/03/12	01/05/10	3/01
S-11	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts	01/02/06	01/02/21	Banking, Trade and Commerce	01/04/05	17 + 1 at 3rd	01/05/02		
S-16	An Act to amend the Proceeds of Crime (Money Laundering) Act	01/02/20	01/03/01	Banking, Trade and Commerce	01/03/22	0	01/04/04		
S-17	An Act to amend the Patent Act	01/02/20	01/03/12	Banking, Trade and Commerce	01/04/05	0	01/05/01		
S-23	An Act to amend the Customs Act and to make related amendments to other Acts	01/03/22	01/05/03	National Finance	01/05/17	11			
S-24	An Act to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence	01/03/27	01/04/05	Aboriginal Peoples	01/05/10	0	01/05/15		

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-2	An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations	01/04/05	01/04/24	Social Affairs, Science and Technology	01/05/03	0	01/05/09	01/05/10	5/01
C-3	An Act to amend the Eldorado Nuclear Limited Reorganization and Divestiture Act and the Petro-Canada Public Participation Act	01/05/02	01/05/10	Energy, the Environment and Natural Resources					

C-4	An Act to establish a foundation to fund sustainable development technology	01/04/24	01/05/02	Energy, the Environment and Natural Resources					
C-8	An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions	01/04/03	01/04/25	Banking, Trade and Commerce					
C-9	An Act to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act	01/05/02	01/05/09	Legal and Constitutional Affairs					
C-12	An Act to amend the Judges Act and to amend another Act in consequence	01/04/24	01/05/09	Legal and Constitutional Affairs	0	01/05/17			
C-13	An Act to amend the Excise Tax Act	01/04/24	01/05/01	Banking, Trade and Commerce					
C-14	An Act respecting shipping and navigation and to amend the Shipping Conferences Exemption Act, 1987 and other Acts	01/05/15							
C-17	An Act to amend the Budget Implementation Act, 1997 and the Financial Administration Act	01/05/15							
C-18	An Act to amend the Federal-Provincial Fiscal Arrangements Act	01/05/09							
C-20	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	1/01
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	2/01
C-22	An Act to amend the Income Tax Act, the Income Tax Application Rules, certain Acts related to the Income Tax Act, the Canada Pension Plan, the Customs Act, the Excise Tax Act, the Modernization of Benefits and Obligations Act and another Act related to the Excise Tax Act	01/05/15							
C-26	An Act to amend the Customs Act, the Customs Tariff, the Excise Act, the Excise Tax Act and the Income Tax Act in respect of tobacco	01/05/15	01/05/17	Banking, Trade and Commerce					

## COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
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## SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
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S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	01/01/31	01/01/31	National Finance	01/03/28	5			
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S-7	An Act to amend the Broadcasting Act (Sen. Finestone, P.C.)	01/01/31	01/02/07	Transport and Communications			
S-8	An Act to maintain the principles relating to the role of the Senate as established by the Constitution of Canada (Sen. Joyal, P.C.)	01/01/31	01/05/09	Privileges, Standing Rules and Orders			
S-9	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	01/01/31					
S-10	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	01/01/31	01/02/08	—	—	—	01/02/08
S-12	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	01/02/07	01/03/27	Social Affairs, Science and Technology			
S-13	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	01/02/07	01/05/02	Privileges, Standing Rules and Orders			
S-14	An Act respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day (Sen. Lynch-Staunton)	01/02/07	01/02/20	Social Affairs, Science and Technology	01/04/26	0	01/05/01
S-15	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	01/02/07	01/03/01	Energy, the Environment and Natural Resources	01/05/10	0	01/05/15
S-18	An Act to Amend the Food and Drugs Act (clean drinking water) (Sen. Grafstein)	01/02/20	01/04/24	Social Affairs, Science and Technology (withdrawn 01/05/10)			
				Energy, the Environment and Natural Resources			
S-19	An Act to amend the Canada Transportation Act (Sen. Kirby)	01/02/21	01/05/17	Transport and Communications			
S-20	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	01/03/12					
S-21	An Act to guarantee the human right to privacy (Sen. Finestone, P.C.)	01/03/13		Subject-matter 01/04/26			
				Social Affairs, Science and Technology			
S-22	An Act to provide for the recognition of the Canadian Horse as the national horse of Canada (Sen. Murray, P.C.)	01/03/21					
S-26	An Act concerning personal navigable waters (Sen. Spivak)	01/05/02					



## PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-25	An Act to amend the Act of incorporation of the Conference of Mennonites in Canada (Sen. Kroft)	01/03/29	01/04/04	Legal and Constitutional Affairs	01/04/26	1	01/05/02		
S-27	An Act to authorize The Imperial Life Assurance Company of Canada to apply to be continued as a company under the laws of the Province of Quebec (Sen. Joyal, P.C.)	01/05/17							
S-28	An Act to authorize Certas Direct Insurance Company to apply to be continued as a company under the laws of the Province of Quebec (Sen. Joyal, P.C.)	01/05/17							

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CANADA

# Debates of the Senate

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1st SESSION

• 37th PARLIAMENT

• VOLUME 139

• NUMBER 39

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OFFICIAL REPORT  
(HANSARD)

Tuesday, May 29, 2001

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THE HONOURABLE DAN HAYS  
SPEAKER





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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Tuesday, May 29, 2001

The Senate met at 2 p.m., the Speaker in the Chair.

Prayers.

[Translation]

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw your attention to the presence in our gallery of His Excellency Gennady Seleznev, the Chairman of the Duma of the Federal Assembly of the Russian Federation, accompanied by a delegation of members from the State Duma of the Russian Federation.

[English]

We had the honour of meeting with our guests earlier today, in particular, with members of the Foreign Affairs Committee of the other place. They are completing what I hope for them has been an interesting and successful visit to the Parliament of Canada.

With Speaker Seleznev are Mr. Mihail Emelyanov, Mr. Nikolai Kiselev, Mr. Mikhail Musatov, Madam Antonina Romanchuk, Mr. Vitaly Safronov, Mr. Alexander Sizov, Mr. Igor Khankoyev, Mr. Sergei Chikulayev, Mr. Anatoly Usov, Mr. Boris Golovin and Ambassador Vitaly Churkin.

Welcome.

Honourable senators, I should also like to draw to your attention the presence in the gallery of the Mr. Pavel Pelant, the Secretary-General of the Senate of the Czech Republic, and Mrs. Eva Bartonova, Director of International Relations, Department of the Senate of the Czech Republic.

## SENATORS' STATEMENTS

### CANADA-RUSSIA PARLIAMENTARY GROUP

#### MEETING OF PARLIAMENTARIANS

**Hon. Marcel Prud'homme:** Honourable senators, I thank His Honour for bringing to our attention the presence in the gallery of an important delegation from the Russian Duma, which is the equivalent of our House of Commons. The delegation is headed by their speaker, as His Honour has said.

Honourable senators, I am happy to report to the Senate on one of the most successful meetings that ever took place. While there were nine parliamentary committees sitting in the House of Commons and the Senate, plus parliamentarians abroad, we succeeded in attracting over 30 members of both Houses,

between ten o'clock and eleven o'clock this morning, at the committee called Canada-Russia Parliamentary Group.

As honourable senators will remember, this parliamentary group was created at the request of our late Speaker, Senator Gildas Molgat. We followed up our meeting by enjoying the hospitality of Honourable Speaker Hays, who entertained our guests. I am pleased that the Canada-Russia Parliamentary Group has helped to cement our closeness.

Honourable senators, when you look at the geography of Canada, you can understand what the new Russia must cope with. In their delegation is a woman member from Vladivostok, which is just north of North Korea and next to China. She must travel across 11 time zones to attend Parliament. Imagine the vastness of Russia and the vastness of its neighbours, who are not always as friendly as we would like.

That is why I believe this group of parliamentarians is so important, honourable senators. Soon, a few of us be asked to join for the next four years. It is important to show our Russian friends that many people in Canada care about what they must go through. Many Canadians believe that we could have closer trade, closer human rights, closer political levels and closer friendships.

Thank you and welcome.

### FUTURE OF THE MONARCHY

**Hon. Serge Joyal:** Honourable senators, a few days ago, two ministers of the Crown questioned whether Canada should remain a constitutional monarchy. However, they did not put the issue in those terms. Instead, they simply suggested that we substitute a Canadian head of state for the Queen's heir when he should come to the throne as King. In their opinion, the monarchy is merely a foreign and anachronistic relic that has no particular significance for Canadians. At best, it is a worn-out vestige of a colonial past that has long outlived its usefulness.

• (1410)

I submit that, as senators, we have pledged our allegiance to the Queen. If our oath has any meaning, it invites us to reflect on the nature of our parliamentary system and the institutions that embody its values, including the Crown.

Let me begin by asking this question: What is the role of the Crown in our Constitution? Though few seem to realize or wish to acknowledge it, the Crown is no less than the fundamental structuring principle of our entire system of government.

Since the 15th century, Canada has been under the uninterrupted sovereignty of French and British monarchs, providing us with a unique sovereign lineage. Today, the sovereignty of Canada belongs to the Canadian people.

In 1867, the Fathers of Confederation conceived an unprecedented federal system that established the duality of the Crown, as expressed in the federal and provincial levels of government. Never before in history had the sovereignty of provincial legislatures and the federal Parliament been recognized under one Crown. The invention of this compound Crown, as Professor David Smith describes it, was a genuine, pragmatic and innovative solution devised by the Fathers of Confederation to respond to the polity.

The concept of an abstract, compound Crown representing the whole of the nation and its autonomous components permeated all of our political and judicial institutions. From this remarkable beginning, the most important feature of the Canadian constitutional monarchy has remained its adaptability.

The exceptional flexibility of the Canadian Crown was also illustrated with the constitutional reforms of 1982. With the repatriation of the Constitution, we recognized the primacy of the rule of law and we achieved the exclusive authority to determine the nature of our governmental system. The Crown lends itself to the will of the Canadian people. Canadians are the sole and absolute masters of their destiny as a nation. Thus, the concept of the Crown as an expression of our sovereignty has proven to be flexible and fully responsive to our political aspirations. The Canadian Crown is a symbol, an institution and an organic principle. Above all else, it is the expression of the continuity of our nation.

Contrary to what is thought by some, the Crown occupies a central place in our Parliament and democracy. It incarnates the transcendent essence of our existence as a nation. It remains above the political fray. It is even the ultimate safeguard of our constitutional liberty to enjoy our rights and freedoms of one united country.

[Translation]

Today's Quebecers are no longer prisoners of yesterday's clichés, victims or pseudo-modernists.

[English]

The Crown is an institution that reaches far beyond the transient circumstances of the day, binding us to a shared history, traditions and values, to the Commonwealth of Nations that encompasses a quarter of the world's people. This is a significant component of our Canadian identity and ought not to be brushed aside lightly.

### THE LATE BEVERLY MASCOLL, O.C.

#### TRIBUTE

**Hon. Anne C. Cools:** Honourable senators, I rise today to pay tribute to the late Beverly Mascoll of Toronto, who was claimed by breast cancer and passed away on May 16, 2001. Beverly Mascoll was a successful and lovely Black woman who always had time for others. She was a good person, a good wife and a

good mother. Beverly leaves behind her husband of 37 years, Emerson Mascoll, their one son, Eldon, and a host of friends.

Beverly Mascoll was a Black Nova Scotian, descended from Black United Empire Loyalists, free men and free women, while Emerson is of West Indian descent. Bev was born in Fall River, Nova Scotia, where the Ash Lee Jefferson School is named for her grandmother. She moved to Toronto as a teenager, where she has lived ever since. In 1970, she established Mascoll Beauty Supply Limited, which became one of Canada's largest distributors of beauty products for Black women. She was always active in the Black community, particularly with the Beverly Mascoll Community Foundation.

Beverly's husband, Emerson, attended St. Francis Xavier University with former Prime Minister Mulroney. Both Beverly and Emerson were friends of Mr. Mulroney.

Now retired, Emerson had been Vice-President of McGuinness Distillers and Vice-President of Nabisco Brands. He was also the first Black person to be appointed to the board of directors of Canadian National Railways.

Honourable senators, reflecting on the life of Beverly Mascoll, I am reminded of the Bible, in particular Psalm 98, verse 8:

Let the floods clap their hands: let the hills be joyful together.

Those of us who knew Beverly Mascoll found her to be an outstanding human being and a wonderful person. Beverly Mascoll, who received many awards and honours, including the Order of Canada, was the light and life of her husband, Emerson, and the inspiration of her son, Eldon.

Honourable senators, I extend to Emerson Mascoll, to Eldon and to the entire family my most sincere sympathy and love in this time of their loss and grief.

### NATIONAL SAFE BOATING WEEK

**Hon. Ione Christensen:** Honourable senators, last week was National Safe Boating Week and the start of a new boating season in Canada. I am a member of the Yukon chapter of the Canadian Power Squadron, a national association that for years has been promoting safe boating through comprehensive training courses.

Boating in cold northern waters has always called for caution and taking responsible precautions. Unfortunately, with the availability of high-powered motors, improved boat design and Sea-Doos, the frequency of accidents and water fatalities has increased.

In April 1999, it was necessary to implement boating safety regulations with set limits on the age of users and horsepower of motors, and regulations providing for an operator's card, and mandatory safety equipment in each boat, from canoes to kayaks to power boats.



The sole purpose of these regulations is to reduce accidents and to save lives. Between 7 million and 9 million people enjoy Canadian waters each year, but, each year, over 200 Canadians needlessly die in boating accidents. Additionally, there are another 6,000 incidents of serious personal injury and loss of property.

The majority of these tragedies are preventable. Statistics tell us that in 40 per cent of all powerboat fatalities, the victims have blood alcohol levels above the legal driving limit. Drinking and boating is not legal, and it is a recipe for a one-way trip.

Honourable senators, I do a significant amount of boating, both paddle and power, and on each trip I see incidents of accidents waiting to happen: people with no life jackets or using them for cushions, overloaded boats, improper handling of high-speed craft and partying.

I urge Canadians to get their boating operator cards, to teach their children to respect and enjoy the water, to have a safe summer and to follow safety rules to ensure that all their boating trips are return trips.

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw your attention to the presence in the gallery of a delegation of judges from the Constitutional Court of Russia. This group is here as part of a study trip of the Canada-Russia judicial partnership project. They are the guests of our colleague, Honourable Senator Beaudoin.

On behalf of all honourable senators, I bid you welcome to the Senate of Canada.

## ROUTINE PROCEEDINGS

### STUDY OF PRESENT STATE OF DOMESTIC AND INTERNATIONAL FINANCIAL SYSTEM

BUDGET AND REQUEST FOR AUTHORITY TO ENGAGE SERVICES—REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE PRESENTED

**Hon. E. Leo Kolber,** Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Tuesday, May 29, 2001

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

#### FIFTH REPORT

Your Committee, which was authorized by the Senate on Tuesday, March 20th, 2001, to examine and report upon the present state of the domestic and international financial

system, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of such study.

Pursuant to section 2: 07 of the Procedural Guidelines for the Financial Operation of Senate Committees, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

LEO KOLBER  
*Chair*

(For text of report, see today's Journals of the Senate, p. 605.)

On motion of Senator Kolber, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

• (1420)

[Translation]

## ADJOURNMENT

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move

That, when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, May 30, 2001, at 1:30 p.m.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

Motion agreed to.

[English]

## NATIONAL FINANCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY ROLE OF GOVERNMENT IN FINANCING DEFERRED MAINTENANCE COSTS IN POST-SECONDARY INSTITUTIONS

**Hon. Wilfred P. Moore:** Honourable senators, I give notice that two days hence I shall move:

That the Standing Senate Committee on National Finance be authorized to examine and report on the role of government in the financing of deferred maintenance costs in Canada's post-secondary institutions; and

That the Committee report no later than the 31st day of October, 2001.

## DEFENCE AND SECURITY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO CONDUCT  
SURVEY OF MAJOR SECURITY AND DEFENCE ISSUES

**Hon. Colin Kenny:** Honourable senators, I give notice that on Wednesday, May 30, 2001, I shall move:

That the Committee on Defence and Security be authorized to conduct an introductory survey of the major security and defence issues facing Canada with a view to preparing a detailed work plan for future comprehensive studies;

That the Committee report to the Senate no later than February 28, 2002 and that the Committee retain all powers necessary to publicize the findings of the Committee until March 31, 2002; and

That the Committee be permitted, notwithstanding usual practices, to deposit any report with the Clerk of the Senate, if the Senate is not then sitting, and that the report be deemed to have been tabled in the Chamber.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE  
TO ENGAGE SERVICES

**Hon. Colin Kenny:** Honourable senators, I give notice that on Wednesday, May 30, 2001, I shall move:

That the Standing Senate Committee on Defence and Security have power to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of its examination and consideration of such bills, subject-matters of bills and estimates as are referred to it.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE  
TO PERMIT ELECTRONIC COVERAGE

**Hon. Colin Kenny:** Honourable senators, I give notice that on Wednesday, May 30, 2001, I shall move:

That the Standing Senate Committee on Defence and Security be empowered to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE  
TO CHANGE NAME

**Hon. Colin Kenny:** Honourable senators, I give notice that on Thursday, May 31, 2001, I shall move:

That 86(11)(r) of the *Rules of the Senate* be amended:

by replacing the words "Senate Committee on Defence and Security" with the words "Senate Committee on National Security and Defence".

## ACCESS TO CENSUS INFORMATION

## PRESENTATION OF PETITIONS

**Hon. Lorna Milne:** Honourable senators, I am at it again. I have the honour to present 862 signatures from Canadians from the provinces of British Columbia, Alberta, Saskatchewan, Ontario, New Brunswick, Prince Edward Island and Nova Scotia who are researching their ancestry, as well as signatures from 126 people from the United States who are researching their Canadian roots. A total of 988 people are petitioning the following:

Your petitioners call upon Parliament to take whatever steps necessary to retroactively amend the Confidentiality-Privacy clauses of Statistics Acts since 1906, to allow release to the Public after a reasonable period of time, of Post 1901 Census reports starting with the 1906 Census.

These 862 signatures are in addition to the 9,704 I have presented in this calendar year, for a total of 10,722 signatures presented to the Thirty-seventh Parliament and over 6,000 to the Thirty-sixth Parliament, all calling for immediate action on this very important matter of Canadian history.

## QUESTION PERIOD

## NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS—POSSIBLE CHANGE TO  
BASIC VEHICLE REQUIREMENTS—EFFECT ON INVOLVEMENT OF  
EUROCOPTER

**Hon. J. Michael Forrestall:** Honourable senators, my question is directed to the Leader of the Government in the Senate. I asked specifically the other day whether the new basic vehicle requirement specification for the helicopter replacement program would be changed to suit Eurocopter, as I had heard, from quite reliable sources, that they were claiming the standards were too high. I have reviewed the requirement specifications on the vehicle, and they have been lowered significantly, to two hours and 20 minutes plus 30 minutes reserve from the government's absolute lowest standard of two hours and 50 minutes plus the 30-minute reserve found in the Statement of Operating Intent.

Why has the government now decided to lower the basic vehicle requirement specification so drastically?



**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, before we adjourned for our break the honourable senator asked a question that concerned me. I immediately sought out the requested information for him. I have been told that there is no change in the Maritime Helicopter Project's stated endurance requirement. After extensive analysis, DND determined that the new maritime helicopter should be capable of remaining airborne for two hours and 50 minutes under normal circumstances, with a 30-minute fuel reserve, and two hours and 20 minutes with a 30-minute fuel reserve under extreme heat conditions.

**Senator Forrestall:** Honourable senators, this is almost incredible. A reduction from the ISA 20 only requires an endurance reduction from the two hours and 50 minutes plus a 30-minute reserve to two hours and 43 minutes plus the 30-minute reserve. The ISA 20 is plainly and simply a red herring to lower the standard to suit Eurocopter as they must be able to hover on take-off on one engine for up to one hour. It is a safety feature and that cannot be done with a full load of fuel.

Will the minister come clean in this chamber and tell us why the government is skewing the competition to suit Eurocopter?

**Senator Carstairs:** Honourable senators, the honourable senator makes very serious charges in his statement. The acquisition of the new maritime helicopter is based on a fair, open and transparent competitive process.

• (1430)

**Senator Forrestall:** This is where we were months ago.

**Senator Carstairs:** The honourable senator indicates that the operational requirements have been changed. They have not been changed. They are exactly the same as they were in August 2000 when the bid was put forward. The operational requirements for maritime helicopters are based on extensive military analysis and realistic operational scenarios of Canada's contemporary needs.

**Senator Forrestall:** I am at a loss, honourable senators. I do not understand — unless some hanky-panky is going on somewhere — why we would lower the standard to include a helicopter that is not even marine oriented; a helicopter that cannot take off and hover for one hour on one engine; a helicopter that only has two engines as opposed to three. What are we doing to the men and women who have to fly and operate these machines? Just what in the name of God is going on?

REPLACEMENT OF SEA KING HELICOPTERS—BRIEFING OF LEADER OF THE GOVERNMENT ON COMPETITION

**Hon. J. Michael Forrestall:** Honourable senators, let me ask the minister a question that I asked her the other day: Has the minister had a briefing on this matter? If the minister has had a briefing, did it cover these questions?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, clearly we have a disagreement here. The

senator indicates that we have lowered the standard. I have told the senator that the standard has not been lowered.

As to whether I have had a briefing, the answer is no. However, as of this morning, I was given three dates when I could have a briefing by the ADM of Public Works, Jane Billings. That briefing will take place between now and June 11. I will ask the honourable senator's questions at that particular briefing when it is confirmed.

**Senator Forrestall:** I will ask Colonel Myrhaugen and the Friends of Maritime Aviation whether they will give the honourable leader a briefing and see what they have to say. We will deal with the matter in the fall, after lives may have been placed in jeopardy.

The minister is incredible, absolutely incredible.

REPLACEMENT OF SEA KING HELICOPTERS—POSSIBLE CHANGE TO BASIC VEHICLE REQUIREMENTS—EFFECT ON INVOLVEMENT OF EUROCOPTER

**Hon. David Tkachuk:** Honourable senators, I should like to follow up on Senator Forrestall's question. He mentioned Colonel Lee Myrhaugen, coordinator of Friends of Maritime Aviation. Colonel Myerhaugen said in an interview in the *Ottawa Citizen* on May 27 that he flew the Sea King for four consecutive hours. The original statement of requirement to replace the Sea King stipulated an endurance requirement of four hours, plus a 30-minute reserve.

Now we understand the requirement to be two hours and 20 minutes, plus the reserve. Why is the government seeming to skew this competition to suit Eurocopter's Cougar, which is less of a helicopter than the Sea King when it first entered Canadian service?

**Hon. Sharon Carstairs (Leader of the Government):** The honourable senator asks essentially the same question that the previous senator asked. The requirements as set forth in August 2000 have not been changed.

**Senator Tkachuk:** Honourable senators, I hear what the Leader of the Government is saying, but the standards have changed. It is not a question of a difference of opinion; it is a question of fact. How can the government buy a lesser helicopter, in terms of endurance — a basic requirement — than the Sea King, which came into Canadian service in 1963? That is essentially what the government has done. We had the minister's assurance that there would be no reduction in requirements to suit Eurocopter. Why the change in such a telling, critical and essential operating requirement?

**Senator Carstairs:** I will repeat for the honourable senator that the operational requirements for the Maritime Helicopter Project were decided by the military through extensive military analysis and realistic operational scenarios of Canada's contemporary needs.



**Hon. J. Michael Forrestall:** Then why were they changed?

**Senator Carstairs:** What Senator Forrestall asked several weeks ago was why the requirements had been changed from the original project to now. The answer is that there has been no change since August 2000, when the proposal was set forth.

**Hon. Pat Carney:** Honourable senators, I have a supplementary question on this topic. This is more the territory of Senator Forrestall, but he is on another coast. I am from one of the wildest and certainly one of the longest coasts in the world.

If the operational requirements have been reduced as stated, could the Leader of the Government please describe the range of operations under the requirements announced here?

If one is operating on the coast of B.C. from Comox, for example, there is a marked difference in how much search and rescue one can do in four hours and the ability to hover, and the amount of search and rescue and the territory one can cover in two hours and 20 minutes.

**Senator Carstairs:** Honourable senators, let us be clear. The amount of time is not two hours and 20 minutes. The amount of time is two hours and 50 minutes, plus a 30-minute reserve, except under extreme heat conditions, which we in Canada do not experience very often. Granted, we do get it occasionally; unfortunately, northern Alberta is suffering extreme heat conditions at the present time. The reality is that there was a list of qualifications from the very beginning of this project.

**Senator Carney:** Honourable senators, if there is a decrease in any of these criteria that the honourable senator has given, there is a decrease in the range and the scope of operations that can be carried out in search and rescue missions on the B.C. coast. I would ask the minister to please to report to the chamber what that diminished range and operating capacity is in terms of the coast of British Columbia, Vancouver Island and the North Pacific, all areas in which our search and rescue operations are vital.

**Senator Carstairs:** As I have said, honourable senators, there is no diminished capacity, but I will ask the question again. If there has been a change, I would be pleased to present the honourable senator with a new, updated answer.

**Hon. Terry Stratton:** Honourable senators, I may drive the Leader of the Government in the Senate up the wall, but I will persist in this line of questioning. I should like to go through the history of what has transpired since 1992.

In 1992, the requirement for helicopter endurance was four hours, plus a 30-minute reserve. In 1996, it was lowered to 3 hours, plus a 30-minute reserve. In 1999, it was lowered to two hours and 50 minutes. Now it has been lowered to 20 hours and 20 minutes, plus the reserve. In 1963, the Sea King went for four hours.

We have asked this question again and again. Why has the statement of requirements changed so radically? The Leader of the Government says it has not changed since 2000, but as I have just explained, it has changed four times. We want to know why the change.

The minister says it has not changed since 2000, but it has changed dramatically from the time our government put out the requirement for 4 hours, plus 30 minutes.

**Senator Tkachuk:** We all know why. They just do not want to admit it.

**Senator Carstairs:** The operational requirements for the helicopter program are based on what the military told us it required for its operational scenarios in 2001.

**Senator Forrestall:** The military did not change it, and you know that.

**Senator Carstairs:** The military made this determination. One presumes it knows what it is doing in terms of understanding its capacity and its needs.

**Senator Forrestall:** Is that what happened to Ran Quail?

**Senator Stratton:** Honourable senators, I think the Leader of the Government in the Senate must go back and find out why. It is fine to say that the military has given the requirements. The critical question is this: Why has the requirement changed from 4 hours to 2 hours and 20 minutes? That matter must be addressed.

The 1999 statement of requirements for the maritime helicopter states that two hours and 20 minutes of endurance time for a maritime helicopter will risk failure 50 per cent of the time. How could the government sacrifice a basic requirement that seals the fate of 50 per cent of all missions before the helicopters leave the decks of the ships?

● (1440)

**Senator Carstairs:** I wish to correct the honourable senator's information. It is two hours and 50 minutes, plus 30 minutes of reserve time.

That is the specification as presently outlined. The exception is extreme heat. Having spent 21 years of my life in Atlantic Canada, I do not remember ever experiencing extreme heat.

**Senator Stratton:** Honourable senators, it may be that they are required to do that. If my honourable friend wants to risk that failure and is willing to put that down on the record, that is her choice. I happen to believe that she is protecting a certain Prime Minister. She is protecting him because he said in the 1993 election campaign that the EH-101 was a Cadillac and that we did not need it. Therefore, the standard was lowered. Is that true or is it not?

**Senator Carstairs:** If I thought that I needed to protect this Prime Minister, I would do so gladly. Fortunately, I do not. His decisions have been respected by the Canadian public three times in a row.

**Senator Tkachuk:** Honourable senators, if the Leader of the Government in the Senate is saying that the military has changed its requirements four times since 1993, do the Minister of Defence, the cabinet and the Prime Minister agree with these changes? Is that the policy of the government?

**Senator Carstairs:** Honourable senators, the policy of the government is to take the advice of the military experts.

**Senator Forrestall:** Honourable senators, there is no question that the standard has been lowered. Was that done to accommodate Eurocopter, which could not meet the military statement of requirements? If that is the case, why must the supplier be Eurocopter?

**Senator Carstairs:** Honourable senators, I am in danger of repeating myself a number of times. The operational requirements for the Maritime Helicopter Project were based on extensive military analysis.

**Senator Forrestall:** Certainly they were. Why does the government not adhere to the recommendations?

#### PRIME MINISTER'S OFFICE

##### REQUEST FOR STATEMENT ON CONVENTION OF COLLECTIVE CABINET RESPONSIBILITY

**Hon. Lowell Murray:** Honourable senators, on another matter, I should like to ask the Leader of the Government in the Senate to obtain from the Prime Minister a formal statement on the status of the convention of collective cabinet responsibility in this government.

The obvious precedent that has been set by Mr. Manley in advocating, obviously without cabinet authority to do so, the most fundamental of all constitutional changes raises the question as to whether the convention of collective cabinet responsibility has been suspended for some ministers or on some subjects. Could the leader obtain a formal statement on this project, because it is quite central to the proper functioning of our system of government?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, that is an interesting question. I will attempt to obtain from the Prime Minister a formal convention of collective cabinet responsibility, as requested.

[Translation]

#### DELAYED ANSWER TO AN ORAL QUESTION

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table

in this House a delayed answer to a question raised by Honourable Senator Rivest on May 1, 2001 regarding the census questionnaire and Canadian linguistic duality.

#### STATISTICS CANADA

##### CENSUS QUESTIONNAIRE—CANADIAN LINGUISTIC DUALITY

The reporting of ethnic origin or ancestry has changed over time partly as a result of changes in census questions and partly as a result of the way individuals identify their origins. However, the census can be used to measure the number of anglophones or francophones for Acadian or any of the cultural groups reported in the census.

Canada is a world leader in the collection of data on language. The census can be used to monitor a number of trends in the number and characteristics of anglophones and francophones. A question on mother tongue has been included in all censuses since 1921 and questions on home language and knowledge of official languages have been included in more recent censuses.

Moreover, for the 2001 Census, there are two new questions that will allow for an even more in-depth analysis of language knowledge and use. In particular a question on all languages spoken at home and a new question on language of work has been added to the census.

#### ANSWER TO ORDER PAPER QUESTION TABLED

##### JUSTICE—SALE OF AIRBUS AIRCRAFT TO CANADA—STATUS OF THE RCMP INVESTIGATION

**Hon. Fernand Robichaud (Deputy Leader of the Government)** tabled the answer to Question No. 9 on the Order Paper—by Senator Lynch-Staunton.

#### PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

**The Hon. the Speaker:** Honourable senators, I should like to introduce the new pages from the House of Commons.

On my right is Andrée-Anne Maranda, a psychology student in the Faculty of Arts at the University of Ottawa. Andrée-Anne is from Saint-Georges-de-Beauce, in Quebec.

[English]

On my left is Jamie Furniss. He is studying in the Faculty of Arts at the University of Ottawa. Jamie is from Whitehorse, Yukon.



## ORDERS OF THE DAY

### JUDGES ACT

#### BILL TO AMEND—THIRD READING

**Hon. Joan Fraser** moved the third reading of Bill C-12, to amend the Judges Act and to amend another Act in consequence.

She said: Honourable senators, I stand as a poor stand-in for Senator Grafstein, the sponsor of this bill, who unfortunately must be elsewhere this day on Senate business. Therefore, I shall not attempt to imitate his wide-ranging and learned remarks on second reading. I will simply make a few brief comments.

Bill C-12 proposes amendments to the Judges Act to ensure appropriate compensation for the federally appointed judiciary in Canada. It is intended to implement the commitments made by the government in its response to the report of the 1999 Judicial Compensation and Benefits Commission.

[Translation]

Honourable senators, the strength of Canada's judiciary is a key factor in our nation's prosperity. Judges are an important pillar of our democratic society. The Canadian judiciary system is the envy of the whole world because of its quality, its dedication and its independence. Our courts and judges are increasingly seen as models of integrity and impartiality by developing democratic nations that are trying to set up fair and effective systems. Even countries with a very long history are taking an interest in our system. In fact, some judges from Russia are visiting us today.

[English]

Like so many of the rights and advantages enjoyed by all Canadians, the importance of an independent judiciary cannot be underestimated or taken for granted.

During his recent visit to China, the Prime Minister commented on the importance of an independent judiciary when he stated:

For no matter how well the laws are written, there can be no justice without a fair trial overseen by a competent, independent, impartial and effective judiciary. A judiciary that applies the law equally for all citizens, regardless of gender, social status, religious belief or political opinion.

Honourable senators, the three constitutionally required elements of judicial independence are security of tenure, independence of administration of matters relating to the judicial function, and financial security. It is directly in support of the principle of judicial independence that section 100 of the Constitution entrusted the fixing of judicial salaries, allowances and pensions to Parliament in 1867. Therefore, the 1999 commission's recommendations are not and cannot be binding. It

is on Parliament that the Constitution has conferred the exclusive authority and responsibility for establishing judicial compensation. However, in the light of a ruling by the Supreme Court, where Parliament decides to reject or modify the commission's recommendations, it is legally and constitutionally required to give publicly a reasonable justification for this decision.

Through Bill C-12, the government is proposing implementation of most of the recommendations of the Judicial Compensation and Benefits Commission, including proposed salary increases and some modest improvements to pensions and allowances. In light of all of the factors considered by this independent commission, including trends in both the private and the public sectors, the government is of the view that the proposals in Bill C-12 are within the range of what is reasonable and adequate to meet the constitutional principle of financial security.

• (1450)

However, the government is not prepared to implement all of the commission's recommendations. Specifically, the government is deferring a proposal that would increase the numbers of supernumerary or part-time judges, pending the outcome of important consultations with the provinces and the territories.

In addition, honourable senators, the government has not accepted the commission's recommendation in respect of legal fees, because the commission's proposal does not establish reasonable limits to these expenditures. Instead, the government is proposing a statutory formula that is designed to provide for a reasonable contribution to the costs of the participation of the judiciary while, at the same time, limiting their scope.

[Translation]

The government is committed to respecting the judiciary's independence, which is a fundamental condition for the preservation of the rule of law in our democratic system of government.

Canada is proud to have a judiciary that is the envy of the whole world because of its competence, its dedication, its independence and its impartiality.

[English]

Honourable senators, Bill C-12 has been brought forward precisely to safeguard the principle of judicial independence, and I commend it to you for your consideration.

[Translation]

**Hon. Gérard-A. Beaudoin:** Honourable senators, Bill C-12 amends the Judges Act to increase the salaries and allowances of federal judges, improve their annuities scheme by making it more flexible, and creating a separate life insurance plan.



This bill seems to me to respect the rule of law. Committee study also bears this out. Various issues were raised and the committee decided to report the bill without amendment. In particular, Bill C-12 seems consistent with the spirit and the letter of the Reference Regarding the Remuneration of Judges.

Bill C-12 embodies the principle of independence of the judiciary. In fact, this bill was the follow-up to the report of the Judicial Compensation and Benefits Commission, which itself came about as a result of the Reference Regarding the Remuneration of Judges.

Incidentally, judicial independence in Canada is ensured by constitutional provisions, constitutional conventions and a long tradition, Supreme Court of Canada decisions, documents which are part of our constitutional law, and the preamble to the Constitution, 1867, as well as the Act of Settlement, 1701. The Canadian Charter of Rights and Freedoms also contains certain principles helping to guarantee the independence of the courts.

Section 99 of the Constitution Act, 1867, enshrines the independence of the judicial power of the superior courts. This section is one of fundamental law.

The criteria determining the extent of judicial independence were first set out in *Valente v. The Queen*. Judicial independence is characterized by security of tenure, financial security, and complete autonomy within the function of judge — institutional independence. These criteria are examined from the point of view of a reasonable person.

In the Reference Regarding the Remuneration of Judges, after a brief examination of sections 96 through 100 of the Constitution Act, 1867, subsection 11(d) of the Canadian Charter of Rights and Freedoms, and the related precedents, Chief Justice Lamer expresses the opinion that the principle of the independence of the judiciary was, initially, an unwritten constitutional principle. The source of this principle dates back to the Act of Settlement, 1701. The principle was recognized and confirmed by the preamble to the Constitution Act, 1867, hence the significance of the preamble to the Constitution of Canada. Thus, the principle of an independent judiciary was transferred to Canada by the constitutional text of the preamble to the Constitution Act, 1867.

It is clearly evident that, since the coming into effect of the Canadian Charter of Rights and Freedoms, the power of the judiciary has increased in importance; its visibility has been enhanced. It has been said that decisions by unelected judges undermine the very foundations of democracy. I do not agree. As Justice Beverley McLachlin wrote in an article of doctrine:

[English]

Far from posing a threat to democratic society, a strong judiciary is essential to the maintenance of our democratic institutions.

**Hon. Anne C. Cools:** Honourable senators, I rise to speak to third reading of Bill C-12. On May 9 last, I laid out the history of judges' remuneration in Canada and its statutory charges against the Consolidated Revenue Fund. I expressed doubts about the process of the Judicial Compensation and Benefits Commission and the setting of judges' salaries. Then, as now, I take no issue with the quantum of salaries or the fact of salary raises. I believe that judges should be adequately remunerated. I repeat: My concern is with the process.

I expressed my misgivings about this bill's exclusion of Parliament and the public representative interest in the setting of judicial salaries. I raised the fact of the roles of certain justices in setting the priorities for public and parliamentary expenditures and their trenching on Parliament's control of the purse, as well as the financial initiatives of the Crown.

Honourable senators, Minister of Justice Anne McLellan appeared before the Standing Senate Committee on Legal and Constitutional Affairs in respect of Bill C-12 on May 10. Minister McLellan's testimony revealed that she is not that well acquainted with the Judges Act, its history, its application and its scope. Further, she seemed not to comprehend the proper constitutional relationship between the judges and Parliament. Minister McLellan seemed to have an insufficient grasp of the history of the Liberal Party's historical and constitutional position on the same, both in Canada and in the United Kingdom.

Senator Andreychuk asked the minister about the international judicial projects, the ministerial and judicial supervision of same and about the funding from the Canadian International Development Agency, CIDA, for these projects. The minister responded, saying:

As I know from my own experience visiting countries around the world, we could be in dozens of countries helping to educate judges and to build the culture of respect for the rule of law and the independence of the judiciary.

The minister said much about Canadian judges bringing the rule of law to underdeveloped countries. I asked the minister about the statutory authority for the international endeavours of these judges, saying:

It was always my understanding that the phenomenon of bringing the rule of law to nations who do not have it, or who lack it, was a political question. When I was growing up, we called it "colonialism." The British called it the "*pax Britannica*." That is a political role, taking the rule of law to other nations, particularly developing nations. It is a political role, not a judicial one.

Could the minister tell us what authority in the Judges Act can be relied upon for the current involvement of judges across the world?

• (1500)

The minister responded, saying:

However, judges have a larger obligation to help, where called upon, to assist those who are trying desperately to create functioning and stable democracies.

She confirmed my assertion that the Judges Act provides for no such obligation in principle or in law. About the so-called authorizing sections of the Judges Act for these judicial international actions, the minister said:

Sections 56 and 57 are not explicit, but do signal the fact that judges may be called upon to do those things over and above their duties sitting in judgment on whatever court they are appointed to.

Honourable senators, the minister stated that her reliance was on two sections of the Judges Act, which she immediately said were not explicit. This is staggering. Honourable senators, they are not only inexplicit, but they are in point of fact contrary. There is absolutely no authority in sections 56 and 57 of the Judges Act for the international activities of Canadian judges. Further, the Judges Act has no international application and is of domestic application only.

The minister then engaged on the Justice Louise Arbour enactment to the Judges Act in the 1996 Bill C-42, from which Madam Justice Arbour became the Chief Prosecutor for the United Nations International Tribunal on Rwanda and Yugoslavia. The minister's misunderstanding of Bill C-42 and her ambiguous insistence on non-existent statutory authority in the Judges Act for the international activities of judges were curious. The fact is that in 1996, Bill C-42 came to the Senate seeking a very wide and general authority for all judges to be able to go abroad to work for international organizations. The Senate said no, and limited the authority solely to Madame Justice Louise Arbour, who, in the most extraordinary procedure, was identified personally in Bill C-42. Before its passage, Madam Justice Arbour had already departed Canada to become the Chief Prosecutor. Her judicial absence was authorized by three Orders in Council, the legality of which is still unclear. The Senate understood that the international activities of judges as proposed in that bill were inherently political in nature, and the Senate, concurred with by the House of Commons, said no, and legislated that the single exception to the general prohibition would be Madam Justice Louise Arbour.

Honourable senators, I shall cite the relevant sections of the Judges Act mentioned by the minister, sections 56 and 57. First, I shall cite section 55 whose marginal note reads, "Judicial duties exclusively." Section 55 states:

No judge shall, either directly or indirectly, for himself or others, engage in any occupation or business other than his

judicial duties, but every judge shall devote himself exclusively to those judicial duties.

Section 56 is telling because it places any and all extra judicial duties squarely into the legislative authority of Parliament and does so in express language. These international activities of the judges, their building of democracy in developing and Third World countries, are not within the legislative authority of Parliament. Such international activities of building international governments fall within the law of the royal prerogative and the law of nations, not within the authority of Parliament. Section 56, whose marginal note reads, "Acting as commissioner," which the minister says is her authority for the international activity of judges, reads in part:

56.(1) No judge shall act as commissioner, arbitrator, adjudicator, referee, conciliator or mediator on any commission or on any inquiry or other proceeding unless

(a) in the case of any matter within the legislative authority of Parliament, the judge is by an Act of Parliament expressly authorized so to act or the judge is thereunto appointed or so authorized by the Governor in Council ...

Section 57, the minister's other authority, reads in part:

57.(1) Except as provided in subsection (3), no judge shall accept any salary, fee, remuneration or other emolument or any expenses or allowances for acting in any capacity described in subsection 56(1) or as administrator or deputy of the Governor General or for performing any duty or service, whether judicial or executive, that the judge may be required to perform for or on behalf of the Government of Canada or the government of a province.

Honourable senators, very clearly there is absolutely no authority in the Judges Act, sections 56 or 57 for any judge of Canada to assist Third World countries to build democracy because the Judges Act understands that the development of democracy outside of Canada is a political function, not a judicial one. The Judges Act has no international application or scope.

Honourable senators, the statutory authority for those judges' international good nation building is a recurring question commanding our study. I should like to quote the then Chief Justice of the Supreme Court of Canada in a broadcast on CPAC, December 9, 1996, just days after the adoption of Bill C-42 as amended by the Senate. In that program, *A Public Life with Antonio Lamer*, Chief Justice Lamer, commenting on the Senate's amendment to the Arbour proposal, said:

I was a little disappointed when the Senate amended this Arbour amendment...



The then Chief Justice told the viewers why, saying:

And that amendment would have made it more easy to meet the expenses because judges, as you know, were supposed to receive money only under the Judges Act, and it's a little dicey there, and that when that amendment was made to bring back down to just Madame Justice Arbour, I was a little disappointed, but I found another way, and I'm going to be having lunch today with Madame Huguette Labelle, the head of CIDA, then I think we're going to go through CIDA. Well, where there's a will, there's a way.

Insistent, the then Chief Justice Lamer continued:

I will be very proud to see 20, 30, 40 judges of Canada at no Canadian judge's expense ... go around the world ...

...these judges that are available, ready to go, these judges, will be going. I'm speaking to Madame Labelle. As I said, I'm having lunch with her today, then I will be speaking to the Commissioner of Judicial Affairs Friday. I'll have lunch with him Friday and I think we'll get the ball rolling very soon.

That was only days after the Senate had said no to his proposals.

Honourable senators, eight months later, then Chief Justice Lamer was interviewed by Cristin Schmitz, again on this question. This was reported in an August 29, 1997 *Lawyers Weekly* article headlined, "Canada's new global role: ...Juges sans frontières." Cristin Schmitz wrote about the international projects of the then Chief Justice Lamer and of Commissioner for Federal Judicial Affairs, Guy Goulard. She wrote:

Mr. Goulard coordinates a growing number of highly successful international judicial cooperation projects, many of which are financially supported by the Canadian International Development Agency (CIDA).

She wrote about the then Chief Justice Lamer's role:

'Juges sans frontières' or 'Judges Without Borders' is how Chief Justice Antonio Lamer smilingly refers to his brainchild.

and went on to say that Chief Justice Lamer:

... is one of the main forces behind the country's role in the international justice arena ...

Informed of the Senate debate and the Senate's limitation of his proposals, she asked him:

During debates in the last Parliament, some Senators argued that permitting off-the-Bench foreign activities by Canadian

judges will undermine the public's confidence in the judges' impartiality.

She quoted his response about the Senate, saying:

I don't think that criticism was valid, and I don't think that most members of the Senate agreed with that criticism," Chief Justice Lamer remarked.

Honourable senators, as a senator involved with that bill, I wrote a letter to the editor in answer to the Chief Justice's remarks. *The Lawyers Weekly* published my letter *in toto* on September 12, 1997. I wrote:

After considerable reflection, and respectful of the convention that Canadian judges not engage Parliament in public debate, or in public policy, or question Parliamentary proceedings, I feel compelled as a Senator to respond to the Honourable chief justice's remarks.

Challenging the then Chief Justice, my letter continued:

I have the gravest concerns about the chief justice's statements regarding the validity of the Senate's opinions and actions to prohibit non-judicial, off-the-Bench international activities by Canadian judges, and the Senate's corollary assertion of the public interest in judges' impartiality, integrity, and judicial exclusivity.

About the Senate, he said, "I don't think that criticism was valid, and I don't think that most members of the Senate agreed with that criticism ...".

Chief Justice Lamer's statements were misleading. The facts are to the contrary.

The Senate's vote on Bill C-42 was unanimous. The unanimous vote at Third Reading, on Nov. 7, 1996, upheld a general ban on Canadian judges' international activities and remuneration for same and affirmed the Judges Act, ss. 54 to 57. That unanimous vote is recorded in Senate Debates at p. 1138.

Simultaneously, in that same vote, the Senate legislated, albeit reluctantly, a sole exemption to that general prohibition.

That sole exemption was Madam Justice Louise Arbour, and the Senate motion of Nov. 7, 1996 cited her specifically by name in s. 56.1(1) as the sole and singular exemption to this statute.

Contrary to Chief Justice Lamer's statements, the Senate definitively and unambiguously declared its will, intent, and validity.



• (1510)

My published letter continued:

On yet another occasion, during the Senate debate itself, in a letter to the Minister of Justice Allan Rock dated Nov. 6, 1996, Chief Justice Lamer wrote:

May I add with respect to the proposals in Bill C-42 contained in s. 56.1(1) that it is extremely unfortunate that the Senators objecting to this general amendment have completely misunderstood its purpose.

Senators were informed of the financial, remunerative and procurement questions involved in Canadian judges' non-judicial, off-the-Bench international activities.

The Senate was aware of the Chief Justice Lamer's, and other honourable justices', wishes and interests regarding Canadian judges' international sojourns. The Senate rejected them.

The Parliament of Canada defeated them, and legislated otherwise and contrarily.

I concluded my letter, saying:

It is deeply troubling that the chief justice has ignored the clearly expressed will of Parliament, and has gone behind Parliament and Parliament's statutes.

I trust that the chief justice will apologize to the Senate for his comments on the political position and the politics of Canada's Senators.

Honourable senators, I move back to Bill C-12. On May 17, 2001, at the Legal and Constitutional Affairs Committee, I opposed and voted against clause 18 of Bill C-12 because I saw it as novel and a blank cheque. The Judicial Compensation and Benefits Commission had expanded the financial role of the Judges Act by adding section 26 in 1998. Now Bill C-12 is creating a novel charging mechanism, being section 26.3. Bill C-12's new section 26.3 of the Judges Act will create a new and additional mechanism under the Judges Act to make statutory charges against the Consolidated Revenue Fund. This is unusual and, to my mind, unacceptable. This section will also allow the commission to determine payments and charges on the Consolidated Revenue Fund. Once again, Parliament has been excluded, and the rights of Canadians' representative control over the public purse has been circumvented.

Honourable senators, I conclude on a most recent judicial development. I speak of the judiciaries' daily involvement as publicists and propagandists. This new-found publicist and public propagandist role for judges in Canada today is unparalleled in our constitutional history. It is commanding

Parliament's attention. Every day, on television and in the newspapers, we see judges in full media flight.

The proper role of judges in relation to propaganda needs some clarification. The proper role of judges in respect of media, propaganda and publicist roles was best articulated by then British Lord Chancellor, Lord Kilmuir, and was known as the Kilmuir Rules. In 1955, Lord Kilmuir wrote a letter to Sir Ian Jacob, the BBC's Director-General, regarding judges, media, and broadcasting, which became known as the Kilmuir Rules and were published in the *Public Law 1986*. Lord Chancellor Kilmuir wrote:

... the overriding consideration ... is the importance of keeping the Judiciary in this country insulated from the controversies of the day. So long as a Judge keeps silent his reputation for wisdom and impartiality remains unassailable; but every utterance which he makes in public, except in the course of the actual performance of his judicial duties, must necessarily bring him within the focus of criticism. It would, moreover, be inappropriate for the Judiciary to be associated with any series of talks or anything which could be fairly interpreted as entertainment; and in no circumstances, of course, should a Judge take a fee in connection with a broadcast.

My colleagues and I, therefore, are agreed that as a general rule it is undesirable for members of the Judiciary to broadcast on the wireless or to appear on television.

These are the Kilmuir Rules as articulated by the Lord Chancellor.

**The Hon. the Speaker:** Senators Cools, I regret to advise that your 15 minutes have expired. Are you asking for leave to continue?

**Senator Cools:** I have only one paragraph left.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Cools:** Honourable senators, it used to be held that the unassailability of judges, founded in moral character in the rules against public and political engagement, both buttressed by the political convention called judicial independence, were the cornerstone of a secure and protected judiciary, guarded and protected by Parliament. This view is in sharp contrast to the current bandying about of the frequently misused and misapplied term "judicial independence." Such misapplication of the term is, at worst, self-serving and, at best, cant. "Cant" is a word that seems to have fallen into disuse in recent years. Nevertheless, it is, at best, cant. The British Constitution gave us in Canada constitutional comity, parliamentary sovereignty, and the political convention of judicial independence. We should honour and uphold our constitutional heritage and in so doing, honourable senators, we will uphold and honour the judges.

**Hon. Edward M. Lawson:** Honourable senators, I will be very brief in the interests of speed and processing this legislation along. Just to restore the debate, I do believe that this bill is primarily a salary bill, and I thought it might be important to point that out.

I think it is also important to note that in the review undertaken by the Judicial Compensation and Benefits Commission, established by the Supreme Court for that purpose, the commission has made reasonable recommendations for increases. Those of us who have some experience with judges know that they work very hard and are worth every penny that they get, and these proposed increases will certainly not make them overpaid. It is important that we recognize that.

I also think, in reviewing quickly the report of the commission to review allowances of parliamentarians, it seems that our future, as far as increases are concerned, flows from the Judicial Compensation and Benefits Commission. In the future, as I read this, the salary of the Chief Justice of the Supreme Court will determine the salary of the Prime Minister. In the future, whatever adjustment is made there will flow from the Chief Justice to the Prime Minister, and it will flow from the Prime Minister to members of Parliament, and ultimately will find its way here.

In the immediate case before us, since it seems that our fate is to be based on the passing of the judges' bill, it seems to me that it would be good practical sense to pass the judges' bill before we get to our bill, which will follow quickly on the heels of this one, and may pass through Parliament with lightning speed, with the exception of the issue of parity, which may cause a delay — and should cause delay. I think it is important that we get the judges' bill. Bill C-12, passed today, so that when the other bill comes hurtling from the other place over to this house at warp speed, we will be in a position to pass that one quickly, as well.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I support the bill, as I supported it at second reading. However, I think that it is incumbent upon the government to give us its views in relation to some of the views that have been expressed by the penultimate speaker, our colleague Senator Cools.

Reference was made to the position as articulated by the Minister of Justice. Earlier in the day, a question was put to the Leader of the Government in the Senate regarding the principle of cabinet solidarity. Therefore, it seems to me that it is incumbent upon the minister, as the government representative in the Senate, to respond. By their silence, the leadership in this chamber could indicate that they are accepting the propositions advanced by Senator Cools. If this is the case, we obviously have

a contradiction within the bosom of cabinet. If not, then what is the case contrary?

In particular, it seems to me that this house should know the government's position on Canadian judges who engage in what I believe to be very important and very valuable international work, as Canada makes its contribution to civil society but also to systems of governance around the world, including the great institution of the judiciary.

• (1520)

As honourable senators know, many thinkers are of the view that three basic institutions in democratic society serve to protect and promote the rights of the people. They are our legislative institutions, civil society or non-governmental organizations, and the independent judiciary. Clearly, we are supportive of the efforts made by members of the Canadian judiciary as part of Canada's international work in the development of democratic societies around the world. It seems to me that this should be the position articulated by the government in either accepting or not accepting the view. Reference has been made to sections 56 and 57 of the Judges Act.

Reference was also made to the statement of the Minister of Justice in committee concerning the application of Bill C-42 and that the minister's position demonstrates a misunderstanding of that act. Does the leadership of the government in the Senate accept that proposition or not?

Reference was made to three Orders in Council. As I listened, there seemed to be some question as to the propriety of those three Orders in Council.

What is the response of the government to Senator Cools' points, in particular the point that by participating in CIDA-sponsored events outside Canada, judges are accepting a salary which is a salary coming from a source other than the source for which Parliament provides? Could we hear from the government as to whether they agree with us?

**Senator Cools:** Just to clarify, honourable senators, I did not say that judges received salaries for their international activities. I said that CIDA funds many projects. However, I have no evidence and, as far as I know, judges are not receiving salaries from CIDA.

I wanted to put that comment on the record so that if Senator Carstairs responds, she will know what I said and what I did not say.

**Senator Kinsella:** I thank the honourable senator for pointing out the inaccuracy of my note taking.



**Hon. Sharon Carstairs (Leader of the Government):**

Honourable senators, I thank Senator Kinsella for the opportunity to clarify the government's position on this piece of legislation. I also want to thank my friend and colleague Senator Cools for her contribution this afternoon. However, as she knows, I do not agree with many of the propositions she has put forward in terms of the roles in which the government and I feel are quite appropriate for members of the judiciary to participate.

Like Senator Kinsella, I am of the view that our judiciary can do very good international work in terms of governance and rule-of-law issues. They have done it in the past, and I hope that they will continue to do so in the future.

Senator Cools made reference to a unanimous amendment that we in this chamber made to the bill. That amendment had to do specifically with lending a member of the senior judiciary in this country to fill the role of prosecutor in the war crimes situation in Bosnia and Herzegovina. In that particular case, the Senate in its wisdom — and I think we are usually very wise — made sure that it limited that permission to a single jurist due to the full-time nature of the work, the particular duties encompassed in the work and the uniqueness of the work. Justice Arbour was afforded that particular opportunity, and she has acted on behalf not only of Canadians but on behalf of the world community in seeking justice for war criminals.

From that perspective, Senator Cools is absolutely right. We did limit permission in that one instance, and I think we did so wisely. However, as I understood the amendment that we made to that bill, we did not in any way place restrictions on other judges doing international work on behalf of CIDA or other organizations. As Senator Cools indicated, they are not paid for the work that they do when they undertake these particular initiatives. They do so in an outreach manner so that the rule of law can spread from country to country, particularly in areas of the world where the rule of law is not a well-understood system of law and legal respect.

Senators Beaudoin and Murray will recall our trip to China. I think we were all shocked by the judicial process in that country. We were there providing aid and assistance to the emerging use of the rule of law in that country. I think those types of initiatives are extremely valuable.

In terms of this specific bill which, as Senator Lawson is quick to point out, is a compensation bill, the compensation is set by Parliament. Yes, there was a process of arbitration; but, in the final analysis, we are deciding what judges will be paid by our support of this legislation. I hope that clarifies the government's position.

[Translation]

**Hon. Roch Bolduc:** Honourable senators, my question is for the Leader of the Government in the Senate. Might we not

suggest that this expertise — exportable abroad, particularly to countries engaged in a reform of their judiciary system — might be provided by retired judges rather than practicing ones?

There are many complaints in the country at this time about the slowness of the justice system. Throughout Canada, the superior and appeal court dockets are full, yet we are sending judges to other countries.

Another solution would be to use semi-retired judges. As honourable senators are aware, a person can work half-time at half-salary from the age of 65, a little like ourselves here in the Senate.

Judges have a very comfortable pension. In fact, a retired judge has about twice the income of a serving senator. Not that I am complaining about my income, honourable senators; on the contrary, I do not want one penny more.

[English]

**Senator Carstairs:** Honourable senators, I thank Senator Bolduc for his very interesting question. He mentioned the idea of using retired judges or those who are now supernumerary. We must recognize that judges do not have to retire until they reach the age of 75. Supernumerary judges frequently choose to become supernumerary because they want a less burdensome occupation. Whether those individuals will be ready, willing and able to go into Third World countries where the living conditions are not those of this country and to do the necessary work remains to be seen. I think it is an excellent suggestion. However, I still think we may need to use active members of the judiciary on occasion to fulfil our mandate not just to provide justice for Canadians, which is clearly their primary role, but to ensure that there is justice on a broader scale throughout the world.

**Senator Cools:** If I may again attempt to obtain clarification, Senator Carstairs has said that she disagrees on certain philosophical points, and I accept that readily. However, it is difficult to disagree on the facts. The facts of the matter are that the authority within the Judges Act for the judges of Canada to be involved in international activity is, at best, unclear and at worst, simply not there. That was the question that I had put to the Minister of Justice when she appeared before the committee. I understand that it is very easy to indulge in a little pride and to have a pride of authorship, in a way, and to say how wonderful it is that the judges of Canada are marvellous and doing wonderful work across the country. I still return to the fundamental fact: There is a long and lengthy constitutional history behind the role of judges and the Judges Act. It was put there many years ago for particular reasons, and some of the reasons were to avoid exactly what is happening now.



When I asked the Minister of Justice precisely what was the statutory authority within the Judges Act that allows the judges to travel around the world and be involved in building governments around the world, she referred to sections 56 and 57 of the Judges Act. I just read those two sections before, and very clearly there is no such authority in those two sections.

Perhaps I misunderstood, or perhaps I was not listening carefully enough, but I accept philosophically that Senator Carstairs disagrees with me. However, on the question of the statutory authority for judges to go across the world, what is that authority, and where is it in the statute?

**Senator Carstairs:** Quite frankly, honourable senators, I do not think there needs to be anything in the statute. It has been done by usage and convention. Many things that we do as senators do not have statutory authority. If one looks at the role of the cabinet, there is no statutory authority for that. I think it is fair to say that it has become part of the custom and usage of what judges have done. It is only an issue when that becomes the major form of employment of a particular judge, as it did with Justice Arbour, and in that circumstance we did meet a specific amendment to the Judges Act.

**Senator Cools:** With all due respect to Senator Carstairs, I have read the relevant section of the Judges Act, sections 54, 55, 56 and 57. Those sections clearly state that judges must be involved exclusively with judicial duties, and those sections, as I said before, have a particular historical origin in their obedience to section 100 of the BNA Act.

It is simply not accurate, or sufficient, to say that the judges can do such international work purely by convention. The Judges Act was created as a particular statute, developed over some 60 or 70 years, precisely to guide the exact nature of the employment, the remuneration and the manners of receiving money from the Parliament of Canada. It has a long constitutional history that cannot be ignored or denied.

The fact of the matter, honourable senators, is that there is absolutely no statutory authority. If there had been, we would not have had Bill C-42 before us four or five years ago. When that bill came before us, the minister of the day was asking for a very wide and general application. The Senate said no, and limited the application only to Louise Arbour. We must still answer this question: If Senator Carstairs is saying that there is no statutory authority or that none is required, then this is certainly a very odd situation because I would submit to senators that if Canada's judges could roam around the world doing other jobs, the benches of the land would soon be empty.

The Constitution of this land and the British Constitution has given to Parliament a special role in respect of guardianship and

protection. The old literature used to say the superintendence and protection of judges. I would say to Senator Carstairs that at some point in time, if not now or today, this chamber owes it to itself to settle this question. If there is a difference of opinion, it is simply not enough to say that there is a difference. I want to know what that difference is. I still come back to the essential point which is, as I maintain, that there is no statutory authority, and that what is going on needs the intervention of Parliament.

**Senator Carstairs:** Honourable senators, when we are called to the Senate we are told to drop everything, that we are to be here every single day the Senate sits. In actual practice, that is not what we do. In actual practice, many of us take on other engagements in the public sphere with respect to public business, and we represent the areas of our country by attending to those specific duties. That is not legislated; that is not in the oath but it is what we do and it is what we respect within this chamber, and we hope within the public at large.

When the bill talks about exclusivity, I do not think that it pretends to say that Parliament can dictate every single hour of every single day, 365 days a year, to members of the judiciary. There is sufficient leeway within the human dynamic to say that if some of our judges can be useful in the helping of governance in underdeveloped countries, then we lend them gladly to those causes, and we do so holding our heads extremely high.

**Senator Carney:** Honourable senators, I have a question.

**The Hon. the Speaker:** This sequence will be better if we let Senator Cools finish.

**Senator Cools:** I was not quite prepared to let Senator Carney go ahead. The fact of the matter is that some debate is required.

Perhaps Senator Carstairs should examine those relevant sections of the Judges Act with a little more attention because this is not simply referring to our summons. A lot of work and statutory history has gone into the question of what judges can do in terms of employment, and how they must be paid, and how they can be paid.

My question to Senator Carstairs is: Can a judge in Canada serve on the board of directors of Lavalin or DuPont International?

**Senator Carstairs:** Rhetorically, I could ask the question: Can a member of the Senate engage in that particular activity? Members of the Senate have engaged in that particular form of activity. Certainly, I know that judges in this country restrict themselves to charitable boards, to arts boards, and many serve with great distinction. To my knowledge, none of them have representation on corporate boards.

**Hon. Pat Carney:** I have a question to the Leader of the Government in the Senate arising out of her answer to Senator Cools, who makes the specific point that there is no statutory authority for the role of supernumerary judges roaming the world, and her comparison with senators. Is she suggesting that the government is opening a Pandora's box of precedents here and that the government would consider supernumerary, retired senators roaming the world on specific assignments? If so, I can recommend many excellent candidates from our side of the Senate chamber who are retiring this summer, such as Senator DeWare.

**Senator Carstairs:** We were not talking about supernumerary judges in the first instance; that came along in a later answer.

The judges who do this work do it without payment. It is not work for which they are provided additional payment. I hope that answers your question.

**The Hon. the Speaker:** Is the chamber ready for the question?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Honourable senators, is it your pleasure to adopt the motion?

**Hon. Senators:** Agreed.

**An Hon. Senator:** On division.

Motion agreed to and bill read third time and passed, on division.

• (1540)

## CANADA SHIPPING BILL, 2001

### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Callbeck, seconded by the Honourable Senator Bacon, for the second reading of Bill C-14, respecting shipping and navigation and to amend the Shipping Conferences Exemption Act, 1987 and other Acts.

**Hon. J. Michael Forrestall:** Honourable senators, it gives me great pleasure to begin second reading debate on Bill C-14 on behalf of the opposition.

Senator Callbeck in her speech at second reading referred to the fact that this bill has been around for some five years. I can assure her, from my days as parliamentary secretary to the Minister of Transport, and chair of the transport committee in the other place, that this bill has had a gestation period of some 20 years. It only proves that if you stay around Parliament long

enough, you get to see some of the projects that you started actually reach completion.

Senator Angus, an expert on the legal and technical issues of this bill, will also be speaking from our side. That leaves me free to deal with some parts of the bill in detail, and to canvass more or less some of the broader policy issues in both shipping and ship building in Canada today.

First, however, the government is to be congratulated for the way it has approached the revisions to the Canada Shipping Act. In the last three years, we have dealt with Bill C-15, which received Royal Assent on June 11, 1998, and it dealt mainly with ownership, registration and mortgage issues of the Canada Shipping Act. In this Parliament, we have dealt with Bill S-17, which honourable senators will recall dealt with liability issues. We now have Bill C-14 in front of us, which I believe completes the reform of the balance of the Canada Shipping Act.

In putting this piece of legislation together, honourable senators, a fairly extensive consultation process has been carried out by government. I want to acknowledge that. Unlike some consultation processes carried out by this and other governments, I believe that, for the most part, the government has listened to the stakeholders in the shipping industry in Canada. I congratulate them for that.

This bill reorganizes and streamlines the Canada Shipping Act in several different areas. Definitions that appear in the act, for example, appear only when the ordinary dictionary meaning has been narrowed or expanded. Much technical detail has been removed from the act to be placed in regulations. While this is something with which we on this side of the house do not normally agree, it has satisfied the desires of the shipping industry. The industry has desired for some time a framework bill, with the rest of it contained in regulation, which could be more easily changed when necessary rather than having to go through the process of amending statute law.

This bill gives the right to impose liens for amounts due under contract of carriage and attempts to clarify the roles and responsibilities of the Department of Transport and Department of Fisheries and Oceans in relation to the many and varied parts of the Canada Shipping Act.

It also amends the Shipping Conferences Exemption Act, 1987, in order to bring it into line with Canada's major trading partners. The changes here were the subject of some disagreement between shipowners and shippers during the hearings in the other place, and I will refer to them in detail later.

First, I would like to highlight some of the issues that strike me as contentious upon my review of this bill. For example, Part 6 of the bill deals with incidents, accidents and casualties and attempts to clarify Transport Canada's role in accident investigation. I would like to hear from the Transport Safety Board on this issue because I do not believe we should pass anything into law that does not have the full endorsement and approval of the Transport Safety Board.



Parts 8 and 9 deal respectively with pollution prevention and response, which is the responsibility of the Department of Fisheries and Oceans; and pollution prevention, which is the responsibility of Transport Canada. I am concerned, as I know others are, that the jurisdictional split not harm our response to pollution control or prevention.

Parts 2 and 10 deal respectively with registration, listing and recording of commercial vessels of all sizes which is to be the responsibility of Transport Canada, while pleasure craft are to be the responsibility of Fisheries and Oceans regarding inspections, investigations, enforcement and licensing. Again, I hope that we have not created more problems than we have solved. In some areas of this country, a pleasure craft can also be a commercial vessel. I hope any confusion resulting from these two jurisdictions will be addressed in regulations and that we have not created a bureaucratic nightmare. The way around this would be to create a computerized system, but that creates its own problems in turn.

Honourable senators, Part 10 contains the enforcement provisions. Senator Callbeck quite rightly pointed out that these were the subject of some controversy in the industry. This issue should be looked at carefully by the Standing Senate Committee on Transport and Communications because the concerns raised seem to centre on the burden of proof required in the new enforcement regime. Administrative penalties carry a lower burden of proof than the present regime. There is also a concern about the lack of due process, the level of fines and the independence of adjudicators.

There are also practical realities that must be faced when reviewing the bill. While the bill establishes what I am sure drafters believe to be an effective regime to combat pollution at sea, the federal government's recent cutback on the number of Aurora aircraft doing patrolled surveillance, especially off the shores of Atlantic Canada, does nothing to help what the Minister of Transport is trying to do this in bill. We need enforcement backup and enforcement potential if this bill is to be effective.

A great deal of our pollution problem comes from unscrupulous captains flushing their bilge at sea. We need more surveillance flights, not fewer, to protect our fishery. This is also an area where the government should review the fines that are levied against polluters. Fines should be doubled or even tripled, particularly where there might appear to be culpable responsibility.

An issue raised by the Canadian Shipowners Association in committee in the other place dealt with the process of granting exemptions under this bill. By clauses 10(3) and 10(4) exemptions must be gazetted to be applicable. We fear this may create unnecessary delays that will negate the purpose of giving the exemptions in the first place. Speed is often of the essence.

I should like to turn to the controversy surrounding the changes to the Shipping Conferences Exemption Act. Shipowners like the changes; shippers do not. The shippers feel that the confidentiality of their contractual agreements is not protected and this prohibits them, in their view, from negotiating the lowest possible shipping price.

The government brought amendments at report stage that were designed to address this issue. These amendments should be studied in detail to ensure that they satisfy the concerns of the shippers and put our shippers on the same level, with the same protection as those in the United States and many of our other trading partners.

For the most part, witnesses appearing before the committee in the other place supported the bill, but had reservations concerning certain areas. These areas should be reviewed by senators carefully in committee because we have the time to get it right.

• (1550)

I wish to turn now to some things that were not addressed by the bill but that were brought before the Special Senate Committee on Transportation and Security, which I had the privilege to chair. During the life of that committee, we met with representatives of the marine industry in Vancouver, Montreal and Halifax. We also learned of the modernization of shipping regulations while we attended the second annual World Safety Conference at the University of Delft in the Netherlands. If we are to have a comprehensive shipping policy that goes beyond the four corners of this bill, these issues must be addressed.

The special committee heard from Michael Turner, then the Acting Commissioner for Canada's Coast Guard. He raised the issue of safety in relation to recreational boaters, as the Coast Guard has jurisdiction over recreational boating. More than 250 people are killed annually in this activity, which represents the highest death rate of any marine activity in terms of numbers of people involved and the resulting deaths. In the committee's interim report on this subject, we supported a Coast Guard initiative of placing age restrictions on those who operate certain types of pleasure craft.

The committee also heard evidence as to the training and the work environment in Canada's marine industry. There is a work ethic which has developed for as long as there have been ships sailing the oceans that those in charge must be on duty continuously until the work is done no matter how long that may take. David Bellefontaine, President and Chief Executive Officer of the Halifax Port Corporation, listed excess hours and fatigue of those involved in the marine industry, but especially longshoremen, as the major safety concern of the Port of Halifax. I suggest that other significant ports throughout Canada share that concern.



The lengthy hours worked without a break were also addressed by Secunda Marine Services Limited. Mr. John Hughes, their port manager, told us:

It is laid down that you should have eight hours of rest in a 24-hour period. I am well aware in the practical sense that this is often very difficult to achieve in an operating environment that is remote from any support.

Because of the culture that surrounds the marine industry and the work ethic assumed by those involved, hours of work become a safety issue but one that does not lend itself easily to a statutory solution. A tired crew is an ineffective crew that may put themselves and others at risk. This applies to longshoremen and indeed to all of those who work to exhaustion and beyond in the marine industry and, of course, in every industry.

Another matter closely related to the problem of long hours is the lack of investment in training and commitment by either government or industry to ensure that sufficient Canadians are trained to serve as mariners in both the short- and the long-term future. A lack of trained young people in the marine industry was identified by a number of witnesses as a great concern to the future of the marine industry.

Captain John Hughes of Secunda Marine termed the "provision of experienced personnel in sufficient numbers to meet the needs of government and industry" as "the biggest challenge facing the shipping industry in the decade ahead." He is concerned that the pool of personnel power from which the industry has consistently drawn will dry up.

As well, he argues that cutbacks in adult education and the fact that there are insufficient tax advantages to employing Canadian mariners will diminish the number of Canadian-trained seamen. That view was shared by the Company of Master Mariners of Canada. Berths must be made available for young men and women. In times of constraint, it is difficult for the Coast Guard or commercial shippers to find sufficient funds to enable Canadians to gain the necessary expertise. As with Secunda Marine, they suggest that tax incentives should be considered for Canadian mariners.

In my opinion, renewed emphasis must be placed on training because as the marine workforce ages — and it surely is aging — safety concerns rise. While an aging workforce does not necessarily mean an unsafe workforce, it may mean that certain participants will become tired from excessive overwork. This brings the issue of safety to the forefront.

Given Canada's geography and the country's reliance on shipping for trade, I believe steps should be taken by the federal government in conjunction with the provinces and private industry to encourage Canada's young people to pursue a career at sea through the provision of an effective training program. As

well, consideration should be given to allowing tax advantages for Canadian mariners and the Canadian ships that employ them.

Honourable senators, while I know that some of these issues are dealt with in Bill C-14 and that others are beyond the periphery of the bill, I urge our Transport Committee to thoroughly discuss these matters, as they are vital to future of the shipping industry.

Finally, I would be remiss if I did not say something about the state of the shipbuilding industry in Canada. We all know that a report entitled "Breaking Through" is on the desk of the Minister of Industry. This report contains recommendations to revitalize shipbuilding in Canada. We are in desperate need of a new shipbuilding policy because it is a pan-Canadian issue. Shipbuilding was addressed in some detail in the policies of my own party in the last election. Senators know that shipyards are located across Canada — British Columbia, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland. Canadian shipyards have the capacity to directly employ in excess of 10,000 Canadians. Currently, they employ less than 4,000.

Canada's shipbuilding industry is extremely sophisticated in terms of design and construction. Computer-based technology is comparable to that used in the aerospace industry for design, planning and production. There are many spin-off industries in the high-tech area from shipbuilding. It has been estimated that a vibrant shipbuilding and marine structures industry could create up to 6,000 new full-time jobs.

Canada's regulatory regime prevents the industry from competing successfully in the niche shipbuilding market — self-unloading bulk carriers, offshore oil and gas structures, tugs and supply vessels. Our competitors support shipbuilders at a much higher rate than we do in Canada.

In order to revitalize shipping, we must exclude Canadian-built ships from Revenue Canada leasing rules. Then, existing depreciation rates applicable to ships would apply without restrictions, and the tax disincentive of owning or leasing would be eliminated. This would stimulate the market for Canadian-made ships, as leasing is the predominant method of financing significant capital items such as a ship.

We must also consider guaranteeing private sector debt financing as done in the United States with long-term amortizations and financing of up to 87.5 per cent of the cost of a project. A refundable tax credit should be given to Canadian shipowners or shipbuilders who contract to build a ship or contract for the conversion or major refit in a Canadian shipyard.

The tax credit equivalent to 20 per cent of the cost of the initial ship of the series, 15 per cent for the second and third ships, and 10 per cent for the fourth would help to no end in stimulating this industry.

We should also promote to the greatest extent possible the building of Canadian military ships in Canadian shipyards. As suggested in the report "Breaking Through," we should negotiate the relaxation of the restrictive conditions of the United States "Jones Act" to allow Canadian ships to carry American cargo in American waters.

Honourable senators, all of this speaks to a comprehensive shipping policy for Canada. I look forward to our discussion in committee. I also look forward to Senator Spivak attempting to fold her bill restricting the use of Sea-Doos into this bill under the heading of "regulation of recreational boating." Like the absence of Senator Angus, I notice that Senator Spivak has just left the chamber.

On motion of Senator DeWare, for Senator Angus, debate adjourned.

• (1600)

### FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Rompkey, P.C., seconded by the Honourable Senator Finestone, P.C., for the second reading of Bill C-18, to amend the Federal-Provincial Fiscal Arrangements Act.

**Hon. Gerald J. Comeau:** Honourable senators, I appreciate the opportunity to lead off the debate from this side on second reading of Bill C-18, to amend the Federal-Provincial Fiscal Arrangements Act, better known as the equalization act.

Since listening to Senator Rompkey's speech commencing second reading debate and later reviewing it in Hansard, I have had to spend considerable time adjusting my notes for this speech. I initially thought I could simply say in one sentence that I agree with the latter part of Senator Rompkey's speech in which he criticized the equalization formula and proposed alternatives to it.

However, due to the importance of the bill to all Canadians, I want to spend some time focusing on the deficiencies of the bill and the equalization system it purports to implement. I want first to thank Senator Rompkey on behalf of those of us who reside in less prosperous provinces for explaining in practical terms how equalization affects all Canadians.

There is a perception among many Canadians, including some politicians, especially in the other place, that equalization simply takes away from the rich and gives to the poor. I refer particularly to the words of the finance critic of the Canadian Alliance Party when he explained in the other place that this system results in low- and middle-income families in his riding paying more taxes to finance equalization. He talked of the

impact of improving the road system or the health care system used by higher than average-income people in recipient provinces.

Fortunately, Senator Rompkey set the record straight. I agree with his general description of the program. Equalization is a program of the Government of Canada. Every citizen of Canada pays for equalization according to his or her means. Equalization is a national program paid for by the Government of Canada using the money it raises by taxing every Canadian. Building on this, we must also recognize that this program is mandated by The Constitution Act, 1982, section 36(1) which reads:

Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to

(a) promoting equal opportunities for the well-being of Canadians;

(b) furthering economic development to reduce disparity in opportunities; and

(c) providing essential public services of reasonable quality to all Canadians.

Section 36(2) reads:

Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

The difference between the position advanced by the government and the position put forward from this side of the chamber centres on the meaning of the phrase "have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation." We do not believe that the solutions proposed by Bill C-18 are reasonable.

I believe that a short, historical review will be helpful in order to better understand the flaws in Bill C-18. The equalization program was introduced in 1957, and since that time has become a central feature of the Canadian federation. In fact, in 1997, the Auditor General referred to it as a vital feature, one of the main successes of our country.

In 1982-83, a ceiling was imposed on the program in order to deal with the possibility of wide fluctuations in payments due to increasing inflation and resource commodity prices. In fact, the ceiling should not have been necessary because of the move in 1982 to a five-province standard which excluded Alberta from the measure. Alberta's significant resource revenues were therefore no longer factored into the calculation of the equalization entitlements.



In the same period as the cap was imposed, the principle of equalization was enshrined in the Constitution. At that time, the current Prime Minister was the Minister of Justice, and in that position he spoke in support of the constitutional amendment resolution on October 6, 1980, specifically in relation to clause 36 to which I referred earlier. It is important to quote his statement on equalization in its entirety. He said:

I would like now to turn to another part of the resolution and speak about equalization. The practice of using federal revenues to redistribute wealth to the less advantaged provinces of this country is well accepted. Since 1957, unconditional transfers known as equalization payments have been made by the federal government to enable every province to provide a reasonable level of public services without having to impose an unreasonable tax burden on its residents. This practice has become so well established that it has now emerged as a fundamental "principle" of Canadian federalism. Sharing of the wealth has become a fundamental right of Canadians, and that is why the resolution entrenches the principle of equalization and commits both orders of government to promoting equal opportunities for the well-being of Canadians; furthering economic development to reduce disparity in opportunities and, specifically, providing essential public services of reasonable quality to all Canadians.

By entrenching this principle in the Constitution, we are enshrining the obligation of sharing which has been fundamental to the Canadian experience.

That was said by the then Justice Minister who is currently the Prime Minister. Later, he referred to equalization as part of the fabric of Canada. He also said that when times were hard, the rich have always helped the poor.

[Translation]

So what happened? This bill directly contradicts the principles defended by the Prime Minister now and the statements he made as Minister of Justice. How did this come about?

When it introduced Bill C-18, the government ignored the viewpoint expressed by the ministers of finance and the premiers of all the provinces in 1999, the permanent removal of the ceiling on equalization payments.

We are told this bill fulfils a promise made by the Prime Minister at a meeting of the first ministers last September, just before the general election was called. He promised then to remove the ceiling for the 1999-00 fiscal year. Subsequently, the program is to be adjusted according to the rate of growth of the GDP. Unfortunately, and this is the essence of our argument against the bill, it reimposes the ceiling until fiscal year 2003-04.

What does this mean for the less prosperous provinces? The imposition of a ceiling means that the provinces benefiting from equalization receive payments smaller than those provided in the formula. The payments set by the equalization formula are adjusted according to the per capita ceiling. Accordingly, benefiting provinces no longer receive equalization according to the standard of the program in question, which increases the disparities the formula was intended to reduce.

Under Bill C-18, an arbitrary ceiling of \$10 billion was set for fiscal year 1999-00. This is also the amount that is to apply until 2004. However, this ceiling does not apply to fiscal year 1999-00, because it was removed for that year and reapplied for the following years. So the provinces receiving equalization will get some \$10.8 billion for fiscal year 1999-00. The effect of this ceiling on the coming fiscal years is devastating.

With the usual growth of the GDP and without Bill C-18, equalization payments would amount to \$13.9 billion in 2003-04. The bill would limit the amount to \$12.5 billion, and perhaps less.

What, in practical terms, is the impact of this reduction? In New Brunswick, Bill C-18 will mean a drop in forecast revenue of \$50 million. This amount would pay for approximately 11 days of health care for the residents of New Brunswick. It would pay the salaries of 1,000 nurses. It would build 25 kilometres of a new four-lane highway. On Prince Edward Island, it is estimated that the ceiling imposed by Bill C-18 will mean equalization payments that are \$9 million less than they would have been without Bill C-18.

• (1610)

This is more money than the province spends annually on technology development, fisheries, aquaculture and the environment.

In my province of Nova Scotia, the Deputy Minister of Finance, William Hogg, speaking to the House of Commons Standing Committee on Finance, pointed out that Bill C-18 placed Nova Scotia at a disadvantage competitively with respect to other provinces, and I quote:

As with most provinces, Nova Scotia is struggling to manage the rate of growth in health care costs, meet our educational needs, and properly fund all social programs. The difference between us, however, is our ability to respond to these pressures. Nova Scotia's ability to generate additional own-source revenues to maintain comparable service levels, while lowering its provincial tax burdens to remain competitive, is genuinely threatened.

How can a province such as Nova Scotia hope to compete with larger economies that are posting staggering surpluses and are offering generous tax incentives to encourage investment by both individuals and business?



This is a good question. It is upsetting to see that, instead of defending the stand taken by Nova Scotia and other Atlantic provinces, the Liberal member for Halifax West, Geoff Reagan, points to the size of the debt as the reason for Nova Scotia's problem. And the minister responsible for the ACOA, Robert Thibault, said that the problem, particularly in Nova Scotia, lies in the fact that the provinces' debts are too large. That is the kind of support cabinet and the Liberal government give the Atlantic provinces and Nova Scotia.

The Liberal members are too weak to defend their provinces and their constituents. It is now up to us here in this chamber to act. This is the Senate's *raison d'être*. We have the right to speak on behalf of our regions. I know that it is difficult not to support one's party, but our regions come first, whatever the directives of Jean Chrétien and Paul Martin.

In our opinion, Bill C-18 is fundamentally flawed. We are pleased that the ceiling for the fiscal year 1999-2000 has been removed, but it must not be restored for the following years. The Prime Minister must make good on his promise.

The second issue that I want to raise regarding the equalization formula has to do with the clawback. This is precisely what is happening in Nova Scotia and in Newfoundland, in particular, with the revenues from the development of offshore oil. As Senator Rompkey said, this situation is easy to describe. The revenues of a province derived from the development of its resources are deducted from its equalization payments, since revenues from natural resources, including royalties, are part of the equalization revenues.

This is what triggered the equity campaign led by the Premier of Nova Scotia, John Hamm. He contends that, for each dollar in royalties from offshore oil, 70 cents are clawed back from the payments made by the federal government under the equalization formula.

During a discussion at the Standing Committee on Finance of the House of Commons between the new Liberal member of Parliament for Markham, Ontario, John McCallum — perhaps better known as the former chief economist of the Royal Bank and as a professor at McGill University before being relegated to the ranks of backbenchers — and officials from the Department of Finance, the clawback of tax credits was set at 100 per cent. Mr. McCallum indicated to the officials that the clawback becomes a deterrent to the development of resources. While there are agreements with Newfoundland and Nova Scotia that somewhat alleviate this clawback, they absolutely do not provide the support that these provinces need.

The best analogy that I can make is to compare this situation to that of a person who is trying to get off welfare and join the labour market. Senator Cohen and the others who participated in the Progressive Conservative Party's working group on poverty are very familiar with the issue. For each dollar that a claimant earns by working, an equivalent amount is deducted from his welfare benefits, thus making it extremely difficult for that

person to stop relying on social assistance. However, if welfare benefits are maintained at the same level and are not reduced for a year or for a certain period of time, the person can ultimately look forward, save money and get back on his feet.

This is all Premier Hamm is asking for in his campaign for equity: elimination of the clawback so as to allow Nova Scotia and the other less prosperous provinces to catch their breaths and get back on their feet. This is undeniably logical.

There must be a better distribution of gas royalties on offshore oil resources between the producing provinces and the federal government. This concept was part of the Progressive Conservative Party's platform in the last election and deserves the support of all members of this House.

When he resigned as Premier of Newfoundland in order to join the federal Liberal cabinet, the present Minister of Industry said the following on the equalization formula:

...offshore oil and gas development both here and in Nova Scotia has been made more difficult by the present equalization formula. The clawback in particular slows down the rate at which receiving provinces can attain the standard of living of the average Canadian.

In the context of a global economy...Alberta, Ontario and British Columbia know very well that it is in the national interest to improve the social and economic well-being of all provinces...This is why they support measures aimed at raising the economic level of all provinces. They know that their own regions benefit from equalization payments. They also know that less prosperous regions contribute to their prosperity, in a way. They provide young, educated and skilled workers for the prosperous provinces...which thus develop their economy.

This basic truth has not yet been grasped by Paul Martin, Jean Chrétien and the Liberal MPs.

Canadians are counting on us to keep this a country of which they can be proud. I call upon all senators to have the courage to represent the regions of this country, especially the less prosperous ones. Let us have the courage to make the government understand that Bill C-18 is unacceptable because it does not solve the real problems of equalization payments and regional disparity.

[English]

Before I sit down, I should like to note that Senator Rompkey and I did discuss — and I am sorry he is not here today — the need for a much deeper and broader look at equalization. We will be discussing this area further. We might suggest that the Senate give an order of reference to the Finance Committee to undertake an in-depth and detailed look at equalization. I see Senator Robichaud nodding his head — in approval, I should hope.

We suggest that the Senate Finance Committee take a serious look at the concerns raised on this side of the house and conduct a proper study.

**Hon. John G. Bryden:** Honourable senators, I wish to take a few moments to participate in the debate on Bill C-18. I will not go into the details of how the equalization formula developed or how it works. Those matters have been thoroughly explained by Senator Rompkey and, indeed, expanded on by Senator Comeau. What is more, I am not sure I understand these matters completely so I would allow their positions to rest.

• (1620)

There are several points that I should like to make. First, this bill is a limited measure to carry out the commitment that was made by the Government of Canada to the provincial governments as part of the deal involving the payment of \$22 billion or \$23 billion in health care funds and to remove the cap from equalization payments for one year. It is interesting to note, as Senator Rompkey indicated in his speech, that the removal of the cap, without going back to the history of how that occurred in the first place, had the effect of increasing the amount of equalization payments available to certain provinces.

To remind you, honourable senators, this means that each province will receive the following amounts for the year 1999-2000: Newfoundland and Labrador, \$36 million; Prince Edward Island, \$10 million; Nova Scotia, \$62 million; New Brunswick, \$50 million; Quebec, \$489 million; Manitoba, \$76 million, and Saskatchewan, \$69 million. What appears to be a significantly asymmetrical division arises because the distribution of the equalization payments is done on the basis of per capita, on the basis of how many people there are in each province.

It is quite clear that the continued removal of the cap in those years when equalization payments are available is done without consideration of whether the formula applied is that which it should be. It is not determined if this formula would continue payments of the same size as years passed. Following on the comments of Senator Comeau, and probably Senator Rompkey as well, a serious look should be taken at whether indeed the current formula is the one that works best in our contemporary society.

The provision in the Constitution Act, which basically says that the Government of Canada will guarantee the provision of basic services for all Canadians, is a right that applies to "have" provinces and "have not" provinces, to poor Canadians as well as rich Canadians.

The formula appears to have worked well to a certain point. We have come a long way from the "Dirty 30s" when our western neighbours did not have black gold pouring out of the ground or gas streaming to California. As I have been told during visits to the Prairies, citizens of certain communities would wait for the train to arrive to obtain their share of potatoes and salt fish from Atlantic Canada.

Since the 1940s and the 1950s, the assistance that has been required to level the playing field has moved in a different direction. The tremendous wealth produced from the ground and poured into the coffers of certain provinces has allowed those provinces to participate in the federal program that attempts to make level the playing field of the provision of services to all Canadians.

Honourable senators, there is a board game called "Gusher." With the roll of dice, you land on a place on the game board and push down your derrick playing piece. If the piece does not press down, you have hit a dry hole. Another person rolls the dice and pushes down another derrick. If his piece does press down, he has hit a gusher. That player is paid a certain amount of funds for that gusher.

To some extent, the geography of Canada can be likened to that board game. If you push the derrick down in various places in Alberta, black gold comes out of the ground. If you push that same derrick down, until now, in the province of New Brunswick, you hit dry holes. There is no viable natural resource spilling out of the ground.

As a result, Alberta and, for the different reason of the automobile industry, British Columbia and Ontario are able to provide the best services for their citizens. As part of the Confederation, they are also able to spread some of those services, through equalization payments, to the "have-not" provinces.

It appears that Senator Comeau is a god because, now, when you push the derrick down in Nova Scotia, you might well hit a gusher. Indeed, a number of gushers have been hit in Newfoundland. You could dig a spade in the ground in Labrador and hit a nickel deposit worth billions of dollars. Hopefully, there will be "have" provinces in Atlantic Canada.

Justifiably so, these provinces are prepared to say that they want to keep a big portion of the benefits of the royalties because those royalties are coming from that province's ground. The province would use the resulting funds to do for its citizens what Alberta has been able to do for its citizens for years. It makes a degree of sense to be able to do that.



• (1630)

Honourable senators, conditions change quickly, even in a small region like Atlantic Canada. For a long time, we were all in the same boat — poor as church mice — and we were considered the “poor cousins” of Confederation. In my estimation, we were made so by some of the rich cousins. Over the years, we tried to do the best that we could. As Senator Comeau indicated, we sent the best minds to run the banks, the auto companies and even some of the rich provinces, in some instances. We were always on the same team.

However, a number of problems are developing. One of them relates to the repayment of the funds — if we are required to repay — that were extended to us to maintain the services that allowed us to remain reasonably comparable to the richer parts of our country. Senator Rompkey’s comment is correct: It is not the case that the rich provinces give to the poor provinces. The fact is that if one is in a high tax bracket in a rich province, he or she pays a great deal of money to the federal government. If one is in a high tax bracket in a poor province, such as New Brunswick, one also pays a great deal of money to the federal government. Those people who are rich pay a great deal of money, and those who are poor do not pay as much.

Honourable senators, I do not think that Senator Rompkey’s analysis is quite complete because no matter how much the rich people in Nova Scotia or Newfoundland used to pay, we simply do not have enough rich people. Therefore, to provide the services, more of the money from rich people in B.C., Alberta and Ontario must be used to provide services in our provinces.

There is currently the possibility that at least two of our provinces, and hopefully all of them, will become rich — not a little bit rich but, like Alberta, filthy rich. They will have lots of money that will be derived from the natural resources in our ground — Atlantic Canadian ground. It is not Saskatchewan ground and it is not Quebec ground, but rather, it is our ground — our resources on which we will receive royalties. Why can we not keep it all so that we can be as rich as the people in Alberta or benefit as much as the people in Alberta?

Honourable senators, in all fairness, I do not think that our fellow Atlantic Canadians want to take it all and turn, from a resource point of view, Nova Scotia and New Brunswick, side by side, into a smaller duplicate of Alberta and Saskatchewan, side by side.

**The Hon. the Speaker *pro tempore*:** Honourable senators, Senator Bryden’s time has expired. Does the honourable senator request leave to continue?

**Senator Bryden:** Yes, please.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** No.

**The Hon. the Speaker *pro tempore*:** Leave is not granted.

**Hon. Tommy Banks:** Honourable senators, may I address a question to Senator Comeau in respect to what he said?

**An Hon. Senator:** No.

**Senator Banks:** Honourable senators, I will then continue along the line of Senator Bryden. As a reminder, Alberta, filthy rich as it is, does not keep all of the money that is the result of our natural resources in the ground.

I remember, and it was not that long ago, that Alberta was a have-not province. Alberta stopped receiving equalization payments in 1961. To me, that is recent history.

With all due respect, the question that I would have asked, had I the opportunity, was in respect of the clawback. I am not certain that it is appropriate that the clawback concept be removed. In other words, if the have-not provinces can deduct from their share of resource revenue, would it also be the case that the “have” provinces could also make the same deductions for the purpose of calculating their contributions to the equalization fund? It is almost a rhetorical question because we all know what we want the answer to be.

Honourable senators, the pendulum to which Senator Bryden referred does swing, and we continue to hope that it swings in the direction of all of provinces. We must be careful that the clawback applies on both sides of the ledger sheet.

**Senator Comeau:** I am pleased that the honourable senator raised that point. I wish to ask Senator Banks a question. However, I will provide a preamble to ensure that the honourable senator is aware that in 1957, there was a form of equalization based on a three-income formula. Alberta, at that time, did not have to calculate its revenues from oil resources. Therefore, because of the type of formula in place at the time, Alberta was able to retain 100 per cent of its oil revenues. I do not know if the honourable senator is aware that there was no clawback then and that since 1982 a clawback provision has been applied.

The honourable senator is absolutely right: We must be careful how we view the issue, and we must also understand how some provinces were able to improve their status. Alberta, because of the tax regime at the time, was able to take its revenues over a period of time and invest them in petroleum-based chemical industries. Was the honourable senator aware of this factor back in 1957?

**Senator Banks:** Yes, I was aware of that. We could have a lengthy argument about the extent to which it took for those revenues to actually reach today’s levels. Development in Alberta did not happen until 1950. It took a long time for revenues to accelerate to the point that they contained six zeros. The regime has since changed, as the honourable senator pointed out.

**Senator Bryden:** Your honour, may I address a question to Senator Banks?



**The Hon. the Speaker *pro tempore*:** You may, Senator Bryden.

**Senator Bryden:** Would Senator Banks agree that the resources of a province are not only the in-ground resources but also the resources that are on and above the ground? In British Columbia, one of the major resources is trees. In New Brunswick, one of our major resources is trees. We have a vast amount of Crown land, proportionate to our size.

• (1640)

When we sell trees to be cut for logs or pulp, the province is paid a royalty called a stumpage fee, and those fees are included in the revenues of the province to determine how much equalization New Brunswick is entitled to. The same applies to the trees cut in Nova Scotia and in P.E.I. Similarly, proceeds raised from the sale of other resources would be treated in the same fashion.

To use a ridiculous example — because Nova Scotia would never allow this — if we were to exempt Nova Scotia Oil & Gas from having part of its royalties clawed back to give it a chance to catch up, would it not be fair for the same rules to apply to New Brunswick, whose resource is trees, and exempt the royalties, the stumpage fees, that the province is paid by the big paper companies or other producers, so that the fees would not be part of the formula?

**Senator Banks:** Thank you for the question. We are into an area about which I know nothing. Therefore, I decline to answer until I find out more about it.

**Senator Bryden:** With respect to the issue I have raised, I believe the honourable senator has not thought about whether those royalties would be the same as the royalties applying to oil or gas, or fish for that matter. He may or may not agree that once we open up the formula we have been living and working with, and people say they want their resources exempted, there will be a stampede of people like me or the premier of New Brunswick coming forth to say, "What are we, chopped liver? These are trees, and the royalties are paid on them. Moreover, they are renewable. We will not empty the basin."

The difficulties developing in Atlantic Canada among Prince Edward Island, New Brunswick, Nova Scotia, and Newfoundland reminds me of when I practised law, and always insisted that partners starting a venture sign legal agreements. They said, "Well, we are friends. If we go bankrupt, we will know." You do not lose your friends when you are going broke; you lose your friends when a great deal of money is being made. Problems arise when someone believes another part of the partnership is getting a huge advantage. Therefore, I would suggest we support this simple move to remove the cap for the period of time specified in order to carry out the deal that the first minister has made.

**Senator Carney:** Is that the question?

**Senator Bryden:** Honourable senators, I would have finished my speech, had I not been denied leave to continue. This

discussion will be very complicated. I suggest that, in the fall, we look seriously at having the Senate Finance Committee study this question, or some other group that is prepared to give it the serious thought required because of the implications involved.

**Senator Banks:** I will answer Senator Bryden by telling him that Senator Murray and I had a discussion this morning, and we anticipate a reference to the National Finance Committee of a study on the questions of equalization.

**Hon. Nicholas W. Taylor:** Honourable senators, marine geology has been my occupation for 40 years, and I pioneered in some of the drilling off Nova Scotia and Newfoundland. What is being overlooked is the fact that Ernest Manning, for example, used to enjoy getting money from Ottawa when we were rolling in oil wealth, since mineral resources were not considered income because capital was being sold. Alberta was lucky for a number of years to be called a "have-not" province because selling our oil and gas was considered selling our capital. That situation has been corrected.

Does my honourable friend not remember the parties? The Honourable Joe Clark was Prime Minister, and he did something which we prairie boys really thought was out of the ordinary, perhaps even going too far. Up to that time, the resources of the maritime provinces had only been considered for about two and half miles beyond the water, and the rest beyond the two and half was called federal land. Mr. Clark said "We will share with you, Nova Scotia and Newfoundland, any rights that Canada will have."

Later, in international law, we extended the borders to countries allowing them to have access to the ocean to the other border. Newfoundland today has a share with the federal government halfway to Ireland. Nova Scotia has halfway to Bermuda. As for New Brunswick, P.E.I. sitting on the offshore keeps it from taking over.

Maritimers have a great deal because they have great land and they will be able to extract money from a far greater area than that in which the original province exists. Alberta and Saskatchewan can only extract minerals from within their borders. A sea coast did not do British Columbia much good because it called the whole area an underwater park and did not let anyone develop the resources. British Columbia might wake up one of these days and allow that to happen.

Per capita, the Maritimes have much more mineral area than almost any other area in Canada, all given by then Prime Minister Joe Clark. I wanted to let you in on that information because this has been my business for many years. The Maritimes have done well, and not only in oil. There is manganese, and the whole sea floor, which contains more than just fish, makes the Maritimes possibly one of the richest areas of the world. I recommend that if you have a grandson who is looking for a wife, you should send him to the Maritimes.

On motion of Senator Kinsella, for Senator Buchanan, debate adjourned.

• (1650)

**FEDERAL NOMINATIONS BILL**

## SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Stratton, seconded by the Honourable Senator Cohen, for the second reading of Bill S-20, to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions. (*Honourable Senator Cohen*).

**Hon. Gerry St. Germain:** Honourable senators, it gives me pleasure to rise today to take part in the second reading debate on Bill S-20. This bill, introduced by my friend and fellow westerner Senator Stratton, is an important contribution to the debate on parliamentary reform. Near the end of the last Parliament, I launched an inquiry on the subject of parliamentary reform. In my speech, I outlined three themes: the need for Parliament to reassert itself over the executive; the need for an elected Senate representing the regions of Canada, minority interests, and performing the legislative role of sober second thought on legislation; and the need for redistribution in the House of Commons and especially in the Senate to give western provinces more representation in Parliament.

Senator Stratton's bill speaks to my first theme, taking power back from the executive. In my speech, I dealt at length with the need to relax the whips in the House of Commons, and perhaps even here in this place on the government side, and the need for a complete attitudinal change on the part of members of House of Commons so they can exercise independent action, not caring if there is to be retribution from the PMO.

As part of wresting power away from the PMO and the PCO, I suggested that Parliament, particularly the Senate, could become involved in the scrutiny of appointments by Order in Council. At that time, I was not sure how this could be accomplished, so I was particularly pleased when I reviewed Senator Stratton's bill.

As far as I am concerned, Bill S-20 is a nice compromise. It gives the Senate the authority to review a group of appointments but leaves the ultimate appointment still with the executive. Its true accomplishment is to shed light on a process which without Senator Stratton's bill is shrouded in secrecy, unfortunately.

The bill establishes in statutory form a nominations committee of the Privy Council. This committee is charged with the responsibility of developing criteria and procedures for the selection of people suitable for appointment to the positions listed in the bill. It then is to make recommendations on the suitability of candidates for these positions.

Clauses 8 and 9 require a minister, who is to recommend an appointment to a position covered by the bill, to select a candidate from the eligibility list established by the nominations committee. Notice must then be given by the minister of the minister's intention to appoint. Notice can either be given to both Houses of Parliament or through the *Canada Gazette*.

Clauses 10, 11 and 12 provide for review by the Senate in Committee of the Whole. We all know how very successful both our review of legislation and review of various annual reports of parliamentary officers has been in the Committee of the Whole in this place.

The bill sets out a strict timetable in which the Senate is to act and also allows for a process whereby ministers may make appointments immediately without prior Senate review in cases of emergency. In what I would hope would be a rare use of the appointments process, the Senate under this bill can carry out a review after the appointment is made. That indicates real fairness in this legislation.

The bill requires the criteria for appointment to be made public and sets out a process of review, and review only, whereby the appointee can be questioned about eligibility, qualifications for the position, and his or her views on the responsibilities of the position. I ask, how threatening to the process of appointment can this really be?

There are those who will argue, as Senator Banks has argued, that this bill leads us down the slippery slope to American-style hearings on judicial appointments. Are the opponents of this bill opposed to any form of scrutiny? Is scrutiny a bad thing, or are we afraid of the American side of things? The American side of things can be good and can be positive. I do not care whether it comes from America or Great Britain. If it is good, let us use it. Is it not strange that because of the U.S. system, which many criticize because it may tend to politicize the Supreme Court, we know more about the two recent candidates for the Supreme Court in the United States than we do about everyone combined on our Supreme Court. Yet, because of the Charter of Rights and Freedoms, the nine ladies and gentlemen who work just down the street from us have the ultimate power to determine the constitutional legitimacy of the laws we pass in Parliament. One can argue that ultimately they have more legislative power than we have because they have the last say.

I was particularly pleased when, during the Easter recess, a number of newspaper articles and editorials came out in support of Senator Stratton's initiative. It was termed a modest initiative, reflective of the man, because the legislation does not give the power to reject nominees. It was stated in the *Montreal Gazette* that:

Taxpayers deserve more openness in the naming of officials and bureaucrats who rule so much of our lives.



This bill deserves to be approved by this place at second reading and sent to committee — let us be fair, because it should be studied — for in-depth study. I hope those who believe in transparency and openness in government and those who believe in taking back some small measure of power from the executive branch will support it. I know about the power that resides in the executive branch because I was once a cabinet minister in the other place. I know how the place operates.

To those who are so concerned about the submission of judicial nominees to scrutiny by Committee of the Whole, I say, as someone who has run for political office, that the most obscure backbencher on the government side in the House of Commons has gone through a much more revealing public process than our judicial nominees are ever put through under the present process. We all know how little power those sitting in the last row on the government side in the House of Commons have when compared to the power of the judiciary, especially those on the Supreme Court of Canada.

Honourable senators, I believe we should support Bill S-20, with the sunshine that it allows in on a process that right now is viewed to be shrouded in a great amount of secrecy.

• (1700)

**Hon. Nicholas W. Taylor:** Honourable senators, I should like to ask a question of the Honourable Senator St. Germain. I was listening, and I am not sure that I heard aright, but did the honourable senator say that the process involving the review board would take place after the appointment had been made or before an appointment could be made?

**Senator St. Germain:** Honourable senators, it could be after, but only in the case of an emergency where the minister names someone immediately and the hearing process in the Senate or elsewhere would not have time to take place. Only in that case would it take place after. Have I explained myself, honourable senators?

**Senator Taylor:** No, the honourable senator has not. Is a Senate appointment an emergency?

**Senator St. Germain:** Senate appointments may be examined. They could be an emergency. I saw them treated as an emergency when the GST debate was going on. Thus, there is that possibility, but it would only be done in the case of an emergency.

**Hon. Tommy Banks:** Honourable senators, I, too, should like to ask a question of Senator St. Germain. The whole form and operation of the Westminster parliamentary model resides in the fact that the Crown rises above the mere mewling mass of politics, whatever politics are, and that it is not tainted by politics. The bill in question, Senator Stratton's bill, contemplates that the viceregal representatives in this country, the Governor General and the lieutenant-governors of the provinces, would be subject to that same political scrutiny. Does the honourable senator concur that viceregals should also be subject to that review process?

**Senator St. Germain:** I thank the Honourable Senator Banks for his question. I think it is something that should be reviewed extensively in committee. I do not have a position on the review of those positions. However, I would certainly like to take part in the whole review process.

Our country is changing; we must reflect the changing political landscape. On that particular question, I am not hung up. I am a great supporter of the monarchy. In fact, I take issue with one of the ministers who has made comments to the media in recent days about the monarchy.

I am more concerned about the effect on Canadians in their day-to-day lives. I refer to the judiciary and the top-level Crown corporation appointments more so than that which relates to the honourable senator's question. This is something that should be studied fully in committee. I am sure that, under the auspices of the honourable senator, whom I consider to be very cooperative and logical, and Senator Stratton, whom I consider to be very capable, we can make a significant amount of progress.

On motion of Senator DeWare, for Senator Beaudoin, debate adjourned.

[Translation]

## IMPERIAL LIFE ASSURANCE COMPANY OF CANADA

### PRIVATE BILL—SECOND READING

**Hon. Serge Joyal** moved the second reading of Bill S-27, to authorize the Imperial Life Assurance Company of Canada to apply to be continued as a company under the laws of the Province of Quebec.

He said: Honourable senators, the purpose of Bill S-27 is to authorize the Imperial Life Assurance Company, a federally chartered insurance company, incorporated under a law of Canada in 1896, over 105 years ago, to continue as a corporation under the Quebec Act Respecting Insurance, in view of its amalgamation with its sister company l'Assurance-Vie Desjardins-Laurentienne. This is the last time this company will appear before Parliament to have its charter amended.

It is necessary to pass private federal legislation because the Canada insurance act contains no provision for Imperial to continue its activities as a provincially chartered company. It is not the intention of the Minister of Finance of Canada to amend the federal legislation at the moment. Accordingly, Imperial's continuation as a Quebec chartered company is prerequisite to its amalgamation with Assurance-Vie Desjardins-Laurentienne.

The new company that would emerge from the amalgamation would report to Quebec's Inspector General of Financial Institutions. This organization performs, for provincially chartered companies, the same functions as the Canadian Superintendent of Financial Institutions, in the case of federally chartered companies. The function of the two agencies is to assess the solidity of financial institutions, to ensure they are financially sound and to ensure the rights of the insured are maintained and respected.



As I will indicate shortly, the decision to amalgamate the two insurance companies was reached because of the benefits doing so would provide for the insured. Allow me to give you a brief overview of the two companies.

The Imperial Life Assurance Company was established by a federal act in 1996, following various transactions after 1968. Imperial has been a subsidiary of the Mouvement Desjardins since 1993. For over 30 years, Imperial has been under the control of corporations established in Quebec. It is active throughout Canada and in the Bahamas. It also has a business portfolio in Hong Kong. While it is well known in Canada, Imperial is a small player, with premiums totalling slightly under \$500 million. It is much smaller than large insurance companies, whose premiums total between \$1 billion and \$3.6 billion. In future, it will be harder for Imperial to compete with these large Canadian insurance companies and with the foreign companies that do business in Canada.

The Desjardins-Laurentian Mutual Life Assurance Company is the result of the merger, in 1994, of the Desjardins Mutual Life Assurance Company and the Laurentian Life. At the end of 2000, the Desjardins-Laurentian Mutual Life Assurance Company merged with another subsidiary of Desjardins, the Laurentian life insurance corporation. The Desjardins-Laurentian Mutual Life Assurance Company is a very solid company and it has permits to do business in every Canadian province. It is well established in Quebec, where it is number one in terms of premiums, with close to 16 per cent of the market.

The Desjardins Mutual Life Assurance Company and Imperial, which are both subsidiaries of Desjardins, have had a joint structure for the past three years. They have the same products and systems, and they have joint services and management. Consequently, from a business point of view, the legal merger is a perfectly logical step in the process to bring the two companies together.

By merging together, Imperial and the Desjardins-Laurentian Mutual Life Assurance Company will form a new company that will more competitively face Canada's major insurance companies.

Based on the financial statements of the two companies for last year, the new corporation will have assets of \$13.4 billion and an annual volume of premiums of \$1.5 billion, which is three times that of Imperial and which is more in line with the volumes reported by larger Canadian companies.

The new company will be on a more solid foundation and will be better equipped to grow. It will be stronger, larger, more financially sound and better capitalized. It will carry on its activities throughout Canada and in the Bahamas. This merging will create a new player that will rank seventh in Canada's insurance industry and that will be more competitive.

The most important aspect of the planned merger is that it is in the best interests of the insured themselves. In fact, insurance

coverage will be increased because the insurer will be larger and stronger, with fuller funding.

• (1710)

Participating insured will also retain their right to receive participating shares. Participating shares are in fact dividends paid by the company to insured who have insurance contracts with this option. These dividends vary according to a number of factors, such as technical results, operating costs, and the company's investment income. They are declared at the discretion of the insurer's board of directors. Following the merger of Imperial and Assurance vie Desjardins-Laurentienne, the participating fund will be larger and therefore less subject to fluctuation.

In addition, like Imperial and Assurance vie Desjardins-Laurentienne, the new company will also be a member of the Canadian Life and Health Insurance Compensation Corporation, an organization which administers the guarantee fund in order to protect Canadian policy holders.

Since the operational structure remains the same, the merger cannot have a negative impact on client service or daily activities. Insured will therefore continue to be served by the same staff in the language of their choice. Finally, the management of Imperial has already told its participating insured that the merger would in no way change the new company's investment policies. An assets management group is now managing the assets of the two companies and this same group will manage the new company's assets. As for the employees of the two companies, no positions will be abolished, nor will any offices be closed as a result of the merger, either for Imperial or Assurance vie Desjardins-Laurentienne. Since the two companies already have common management, common services and the same systems, the merger will not have any impact on jobs because there will continue to be a common structure.

Activities in Toronto, where some 500 employees are now working, will continue as usual, and the three operating sites in Quebec — Lévis, Quebec City and Montreal — where there are almost 2,000 employees, will also be maintained.

In conclusion, whether from the point of view of business, customer protection or job maintenance, the planned merger is a solution for the future of both the Imperial and its sister company, Assurance vie Desjardins-Laurentienne.

I should point out that the bill has already received the support of the regulatory authorities, an independent actuary, and Imperial's policy holders. In fact, the Superintendent of Financial Institutions, to whom Imperial reports at the present time, has been associated with the process from its inception and has indicated that he is in favour of the merger of Imperial and Assurance vie Desjardins-Laurentienne. So is the independent actuary mandated by the two companies to give an opinion on the merger's impact on policy holders. He concludes in this report as follows:

The merger will preserve or improve existing services and the security and reasonable expectations of policy holders as far as benefits and participating shares are concerned; overall the merger is being proposed in the best interest of the policy holders and shareholders of both companies.

The merger of these two companies has received the approval of Imperial's policy holders. The 100,000 or so policy holders were consulted according to the required procedure in early April, in a mailing that included an information package, a simplified brochure and a ballot. The response was highly significant. As was announced at Imperial's extraordinary general meeting held this past May 11 in Toronto, over 90 per cent of the policy holders who voted indicated that they were in favour of the planned reorganization.

This unequivocal policy holder support is without a doubt a convincing argument that cannot help but work in favour of continuing the merger plans. It is therefore certainly in Imperial's interest, and consequently that of the policy holders themselves, for the bill before this House to be studied in committee and eventually voted on by honourable senators.

**Hon. Gérald-A. Beaudoin:** Honourable senators, after they were introduced in this House, I had the opportunity to read the two private bills — Bill S-27 and Bill S-28 — Senator Joyal has just presented.

I understand there is currently no provision authorizing federally incorporated insurance companies, such as Imperial Life Assurance Company and Certas Direct Insurance Company to seek continuance as a corporation under the laws of a province.

The two bills contain nothing contentious, and are put before us only because of the unique nature of the proposed reorganization, which, because of its singularity, is not covered under the Insurance Companies Act. In both cases, they serve the best interests of those insured by the two applicant companies.

The two bills have the support of the Office of the Superintendent of Financial Institutions, which oversees the operations of Imperial and Certas.

In the case of Imperial, participating policyholders were also publicly consulted on the bill, as is the custom with life assurance companies in such circumstances. The participating policyholders, who voted at a meeting on May 11, approved the bill by a majority of over 90 per cent.

Honourable senators, I support the recommendation by Senator Joyal that these two private bills be referred to committee.

**The Hon. the Speaker:** Honourable senators, if no other senator wishes to speak on this motion, it shall be considered to have been debated.

Motion agreed to and bill read the second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker:** When shall this bill be read the third time?

On motion of Senator Joyal, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

## CERTAS DIRECT INSURANCE COMPANY

PRIVATE BILL—SECOND READING

**Hon. Serge Joyal** moved the second reading of Bill S-28, to authorize Certas Direct Insurance Company to apply to be continued as a company under the laws of the Province of Quebec.

He said: Honourable senators, I will try to restrict my few comments to the essential elements of Bill S-28. This bill seeks to authorize Certas Direct Insurance Company, a federally chartered insurance company, to continue its activities as a provincial insurance company under Quebec's Insurance Act, in order to merge with its sister corporation, les Assurances générales des caisses Desjardins.

The decision to merge these two insurance companies is part of a corporate restructuring and was made to maximize, among the same group of companies, the financial benefits of each one, with the ultimate objective of expanding business outside Quebec.

This type of administrative reorganization is common among financial groups of that size. A private bill is necessary for the purpose of this reorganization because these corporations are subjected to different jurisdictions. Otherwise, the Superintendent of Financial Institutions would have approved this restructuring himself. As I mentioned during the review of the private bill to authorize Imperial to apply to be continued, the Insurance Companies Act does not include any provision allowing an insurance company that was incorporated under this act to continue its activities as a provincially chartered company.

Canada's Superintendent of Financial Institutions, who currently has jurisdiction over Certas Direct, was involved in the process from the very beginning and was favourable to the merger of Certas and les Assurances générales des caisses Desjardins.

• (1720)

I will begin by giving a brief overview of the two companies in question. Certas Direct Insurance Company was incorporated in 1993 under the name CIBC General Insurance Company Limited, as a branch of the CIBC.



On August 31, 2000, the Société de portefeuille du Groupe Desjardins, assurances générales, a branch of the Mouvement Desjardins, bought CIBC's general insurance companies, The Personal Direct Insurance Company of Canada and CIBC General Insurance Company Limited, whose name was subsequently changed to Certas Direct.

Certas is a relatively young company which, in recent years, has had some large operating losses and therefore requires a restructuring of its business in order to further its future development. At the end of fiscal 2000, it had \$120 million in gross premiums written, with over \$100 million in tax losses.

Les Assurances générales des caisses Desjardins is a company incorporated under the Loi sur les assurances du Québec, which wrote over \$451 million in gross premiums in 2000. Assurances générales des caisses Desjardins is a very strong company which has had an ongoing history of profits for many years. It is licenced to operate in the Province of Quebec only. With close to 9.6 per cent of the market, it is one of the most profitable loss insurers in Canada.

As part of the reorganization, a new federally regulated insurance company, the new Certas, will be created in order to pursue the activities of the former Certas outside Quebec. The issue of new insurance business will be done by this new federal company to which the former Certas will transfer all its current business.

This new federally regulated Certas will offer the same products and services. It is the former Certas, stripped of the current business transferred to the new Certas, but retaining the liquidation portfolio, which will be continued as a provincial company and merged with les Assurances générales des caisses Desjardins.

This merger is also in the best interests of the insured and, more importantly, existing policies and future ones will be transferred to the new federally chartered company, which will be supported through new capital and growth strategies geared to that market.

Therefore, the interests of the insured will be protected and the merger will not have any effect on customer service and on daily activities. The insured will continue to be served by the same staff in the language of their choice.

As far as the employees of the two companies are concerned, the restructuring will not result in any job losses or office closures and operations outside Quebec, which involve about 1,000 employees, will go on as usual. The two places of business in Quebec, namely Lévis and Montreal, which have close to 2,000 employees, will also be maintained.

In conclusion, whether it is business operations, the protection of the insured or the preservation of jobs, the merger is good for

the future of Certas Direct and of the insured. It is definitely in the best interests of Certas and les Assurances générales des caisses Desjardins and, consequently, in the best interests of the insured, that this bill be referred to the Standing Committee on Legal and Constitutional Affairs before senators vote on it.

**Hon. Gérald-A. Beaudoin:** Honourable senators, the comments that I made during my previous speech on Bill S-27 also apply to Bill S-28. Therefore, I support this bill for the same reasons.

**Hon. Senators:** Hear, hear!

**The Hon. the Speaker:** Are honourable senators ready for the question?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read the second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Joyal, bill referred to Standing Committee on Legal and Constitutional Affairs.

## UNITED STATES NATIONAL MISSILE DEFENCE SYSTEM

MOTION RECOMMENDING THAT THE GOVERNMENT NOT SUPPORT DEVELOPMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Roche, seconded by the Honourable Senator Finestone, P.C.:

That the Senate of Canada recommends that the Government of Canada avoid involvement and support for the development of a National Missile Defence (NMD) system that would run counter to the legal obligations enshrined in the Anti-Ballistic Missile Treaty, which has been a cornerstone of strategic stability and an important foundation for international efforts on nuclear disarmament and non-proliferation for almost thirty years;



And on the motion in amendment of the Honourable Senator Finestone, P.C., seconded by the Honourable Senator Bacon, that the subject-matter of this motion be referred to the Standing Senate Committee on Defence and Security for study and report back to the Senate.—(*Honourable Senator Robichaud, P.C.*).

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, when I called for adjournment of this motion, there was a question as to which committee ought to have the motion referred to it. The motion in amendment dealt with its being referred to the Standing Committee on Defence and Security, a newly struck committee.

The author of that motion has completed his consultation. It was, moreover, for this reason that I had requested adjournment, so that he could verify whether this was indeed the committee to which the motion ought to be referred.

I have since been informed that another senator would like to speak to this motion. I would therefore be happy to yield the floor to him, if he wishes to make his remarks now.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I would like a clarification on the interpretation of the motion in amendment. I will put my question to the Deputy Leader of the Government.

Senator Finestone's amendment asks us to refer the subject matter of the motion to a committee, but if I understand Senator Roche's proposal, the subject matter of the motion is to avoid any support for the development of a national missile defence system.

If my interpretation of the amendment by Senator Finestone is correct, it would mean that we would instruct a committee to take note of the subject matter of the motion and, directly or indirectly, we would speak against the American project, because the subject matter of the motion is in fact to the effect that we take a stand immediately on a project of which we know nothing. Is my interpretation correct? I can only put the question to Senator Robichaud, unless someone else takes part in the debate. This concerns me considerably, and I should like to know exactly what the subject matter of the motion means and if my interpretation is correct.

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, the subject matter of the motion concerns what the honourable senator has just said, that is, that we avoid involvement and support for the development of a National Missile Defence, commonly known as the NMD. However, on the subject of this defence system, very little information is available. It is discussed in vague terms, with no possibility of specifying the scope of the system or whether it would be deployed by sea, air or land.

In fact, the information is simply not available and so it is for this very reason that I think the Defence Committee could go after the information so that when the motion comes back from committee we can make an informed decision. At the moment, we clearly lack information.

[English]

• (1730)

**Hon. Sheila Finestone:** Honourable senators, I put my motion in amendment before the house in particular because so little is known about this field, which has enormous social, economic, cultural and financial implications for Canada. We need to study the issue before we take a position on it. I believe I made it quite clear that I think we should not abolish the ABM but, rather, support it.

I hope that clarifies the situation. I wished to have the matter referred to the Defence Committee for study. We cannot take a position on this matter until we know more about it.

**Hon. J. Michael Forrestall:** Honourable senators, I wish to comment briefly on the current position of the Government of Canada on the National Missile Defence system and, with the permission of the chamber, take the adjournment. The Prime Minister has taken the stance that Canada should research the proposed system before establishing an official position. While this appears to be prudent, we may be allowing the opportunity to influence the United States in their policy to pass us by.

President Bush and his administration have consistently stated their desire to consult with their allies before any form of missile defence would be deployed. These consultations will not, and cannot, be based on the specifics of the missile defence program, since it currently has no established system. If they were to implement the program attempted by the Clinton administration, construction would have to begin by the end of 2001 in order to meet the target date of 2005. That program achieved limited results and President Bush has agreed that there were "inadequacies in such a program."

During President Bush's May 1 speech to the National Defense University it became abundantly clear that our friends in the United States will pay little attention to the Anti-Ballistics Missile Treaty when and if they intend to move forward in their missile defence plans.

Secretary of State Powell hopes to hold a summit with Russia — although currently with no success — in order to renegotiate the ABM. President Bush openly stated that Secretary of Defense Rumsfeld has been looking into both land-based and sea-based options which might violate the ABM treaty as it currently stands.

Honourable senators, may I remind that you that Secretary Rumsfeld headed the independent commission which produced the report which spurred former President Clinton to create a missile defence system that he had previously opposed. As our neighbours and allies, any system designed to protect the United States involving the development of increasingly advanced missile technology should be of the utmost concern to all of us as Canadians.

These consultations act as an opportunity for allies of the United States to comment on the political and social ramifications of the missile defence system. Secretary of State Powell will be speaking to NATO, as will Secretary of Defense Rumsfeld, by early June. President Bush plans to speak with NATO, Brussels and the European Union by mid-June. Meanwhile, the Government of Canada, understandably, has yet to express a firm position on the issue.

Honourable senators, I would hope that the Government of Canada would seek, through parliamentary committee consultations, to develop a clearer position and certainly clearer information with regard to the missile defence development and deployment by the United States, in whatever form that may take.

I wish to adjourn the debate in my name.

**Hon. Douglas Roche:** I should like to ask a question of Senator Forrestall.

**The Hon. the Speaker:** Senator Forrestall will have to agree to accept a question.

**Senator Forrestall:** With all due respect, I wish to decline any questions until I have finished my remarks, at which time I will be pleased to entertain any questions or comments.

On motion of Senator Forrestall, debate adjourned.

## NATIONAL DEFENCE

### QUALITY OF FAMILY LIFE IN THE MILITARY—INQUIRY— DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Cohen calling the attention of the Senate to the quality of life of the military family and how that quality of life is affected by government actions and by Canadian Forces policy.—(*Honourable Senator Wilson*).

**Hon. Lois M. Wilson:** Honourable senators, I rise to address the matter raised by Senators Cohen and Pépin concerning the quality of life of military families and how that quality of life is affected by government actions and by Canadian Forces policy. I do not intend to repeat their assertions which are on record. However, I support their statements and commend their remarks

for your study. This matter is especially pertinent since the Senate now has a newly formed Defence Committee.

The nub of the question on the quality of life of the military family was summed up in Senator Cohen's contribution when she quoted Lieutenant-General Mike Jeffrey as follows:

We are trying to change the culture of an institution while protecting the principles on which the institution is based.

In her book *No Life Like It*, which she co-authored with Lucie Laliberté, Deborah Harrison, then Chair of Sociology at Brock University, described the culture of the Canadian Forces. She described the main features of this culture as follows:

Male bonding is a very important feature of military culture, its purpose being to facilitate unit cohesion, considered indispensable for effective combat. The military ethos rests on two assumptions: the first being the idea of the omnipresent enemy, and the second, the assumption that force or violence is a legitimate way to solve conflicts. Following on from this is the principle of combat readiness. Because military personnel must constantly brace themselves for the ultimate — the sacrifice of their lives, or at least the risk of the same — combat readiness requires that they be tough and in control of a situation. Success in combat also requires a working chain of command. The military therefore place an enormous emphasis on hierarchy, orders, and obedience. The Code of Military Honour, for example, requires that members reveal secrets about their peers whenever supervisors ask them. In practice, this means that several, in self-protection, prefer not to know their peers' secrets.

On the other hand, one of the features of military life is the solidarity among peers. The team is everything. Flawless appearance is a requirement, and military wives soon learn to maintain a flawless image. Failure to maintain that image may have dire consequences. Wives therefore become extremely reluctant to disclose problems of a personal nature. Unit cohesion means conformity and those who are different may be perceived as a threat to social cohesion, which is so necessary in battle. A main military objective is complete control, since that will destroy the confidence of the enemy.

The authors conclude that "the military's negative attitude toward women is deeply embedded within its obsession of homogeneity, its methods of training for violence, and its traditions of male camaraderie."

Some of what I have quoted will not commend itself to you. Some of it obviously needs to be acknowledged and changed. Surely most of the things mentioned constitute what the Lieutenant-General meant when he spoke of the need to change the culture of the institution.



• (1740)

Some of it, however, articulates the principles that need to be protected if this institution is to survive and do what it is meant to do. What we need to be doing is holding the two things together: changing the culture of the military while at the same time preserving the principles that are necessary for the survival of the institution, if that is possible. It is a very delicate balance.

In the context of this military culture, a major conclusion of the authors is that civilian women living in the Canadian Forces community experience special isolation, vulnerability and abuse. The May 2000 report on the issues of the Canadian Forces responses to women abuse in the military and of family violence among military families, to which Senator Pépin referred, made 51 recommendations to correct the situation. The main ones are that the Canadian Forces must understand and acknowledge that women abuse is a significant and serious problem in Canadian society and in the Canadian Forces community.

Another recommendation is that more resources be made available for the support of Canadian Forces women abuse survivors and their children.

In an assessment of what resource personnel have available to assist in resolving these problems, I was particularly interested in the comments about military chaplains. Chaplains are required to foster the well-being of Canadian Forces members' families, but they have no mandate to minister to former Canadian Forces spouses. The first priority is to serve Canadian Forces members rather than serve the members' families. However, the chaplain's role in violent situations is often more crucial than that of the social worker, given that the chaplain is on 24-hour call and has access to every level on the chain of command.

When a survivor of abuse seeks refuge in a women's shelter, it is frequently through the chaplain rather than the chain of command that shelter staff subsequently contact the base to arrange the survivor's visits to collect belongings or arrange visits with children.

There are two problems with military chaplains currently doing this job. The first is that they are military members and are encouraged to think like military members. They occupy a rank; they wear a uniform; they undergo basic training; they deploy on overseas missions. They also know that the career costs for members labelled as women abusers are high. Some chaplains, therefore, counsel survivors not to report abuses to the chain of command, or to drop charges, or to make allowances for their partner's stressful job.

A second problem is that most chaplains have not received training in women abuse dynamics either from the Canadian Forces or from theological colleges. There is a mistaken perception on the part of many Canadian Forces supervisors and survivors that they, in fact, have been trained to handle women abuse situations. Consequently, the tendency is to entrust chaplains with situations that they cannot and should not handle.

Chaplains who are ignorant of women abuse dynamics can make mistakes that have horrendous implications for survivors' lives.

Unquestionably, some women abuse survivors have been fortunate in their dealings with chaplains. However, much of their good fortune appears to have been a function of these military chaplains' personal qualities. Included in the 51 recommendations are a number dealing with the importance of training for human service professional personnel in the matter of identification of women abuse, gender dynamics and military resources that exist for survivors.

I hope more senators join in this inquiry. It is important that we contribute our ideas to help change the culture of the institution while at the same time protect the principles on which the institution is based.

On motion of Senator DeWare, debate adjourned.

## THE SENATE

### BRITISH COLUMBIA—ELECTION OF SENATORS—INQUIRY

On the Order:

Resuming debate on the inquiry of the Honourable Senator Carney, P.C., calling the attention of the Senate to the desirability of electing Senators from the Province of British Columbia to the Senate of Canada.—(*Honourable Senator Milne*).

**The Hon. the Speaker:** I must inform honourable senators that under rule 35, if the Honourable Senator Carney speaks now, her speech will close the debate on this item.

**Hon. Pat Carney:** Honourable senators, I have consulted with Senator Milne, who wished to speak to this inquiry, and she has decided not to.

I will take three minutes of the honourable senator's time to read into the record a reply from the former Premier of British Columbia, Ujjal Dosanjh, to my suggestion that British Columbia reintroduce the Senatorial Selection Act to elect senators, as the retirement of Senator Perrault reopened this opportunity. Because there was interest, I wish to read into the record his reply.

I strongly agree that British Columbians desire better representation in a reformed Senate. I also agree that the sense of alienation that British Columbians often feel towards the federal government could be reduced if we had a stronger voice over the affairs of the nation. Having said that, I do not believe that holding elections to fill British Columbia vacancies would assist in addressing the fundamental issues facing the Senate. In fact, the election of senators at this time might undermine efforts to achieve the fundamental changes that are badly needed, such as the redistribution of seats to provide more equitable representation for British Columbia.



As you are aware, fundamental Senate reform would require a constitutional amendment, and subsequently a provincial referendum. While British Columbia is not opposed to Senate reform, at the present time, it is not a matter of priority to commence constitutional discussions. Our priorities continue to be protecting health care and assuring that British Columbians have access to high quality, affordable education.

I commend you for the very generous offer you have made to vacate your seat in order to provide momentum for change. Your devotion to the cause of improving British Columbia and Western representation in Ottawa is indeed laudable. I hope that we will have the opportunity to work together in the future to bring about the fundamental reforms to the Senate that are truly needed.

Again, thank you for writing on this important issue.

This, honourable senators, in my view, does close debate on this matter.

**The Hon. the Speaker:** If no other honourable senator wishes to speak, this inquiry is considered debated.

### ASIAN HERITAGE

#### MOTION TO DECLARE MAY AS MONTH OF RECOGNITION— DEBATE ADJOURNED

**Hon. Vivienne Poy,** pursuant to notice of May 15, 2001, moved:

That May be recognized as Asian Heritage Month, given the important contributions of Asian Canadians to the settlement, growth and development of Canada, the diversity of the Asian community, and its present significance to this country.

She said: Honourable senators, on May 5, 2001, I attended a public forum in Calgary to kick off Asian Heritage Month. This year, for the first time, Calgary joined with Toronto, Vancouver, Montreal, Edmonton and Halifax to acknowledge and celebrate the important contributions of Asian Canadians. Throughout Canada there were screenings, readings, visual arts exhibits, theatre presentations and festivals in which Canadians of both Asian and non-Asian descent participated in community celebrations.

While various cities in Canada hold events to celebrate Asian heritage, British Columbia is the only province to have officially declared May as Asian Heritage Month. It first declared it in 1996 and has since proclaimed it on an annual basis.

In marking the fourth anniversary of the event in the year 2000, Premier Dosanjh and the Minister of Multiculturalism and

Immigration, Sue Hammell, noted the importance of Asians in British Columbia both historically and currently.

• (1750)

Hammell said:

The Asian-Canadian community makes enormous contributions to our province. The community has been here for more than a century, and its pioneers have left an impressive legacy. Succeeding generations continue to play important roles in the economic, social, cultural and political life of British Columbia.

Official provincial designation of Asian Heritage Month in British Columbia has helped to build grassroots support for the month-long celebrations.

In the United States, official acknowledgement of Asian-American contributions dates back more than two decades to 1979 when President Jimmy Carter designated May 4 to 10 as Asian-Pacific American Heritage Week. Later, President George Bush extended the week-long celebration to a month. Asian-Pacific American Heritage Month was proclaimed in October 1992. As a result of this official acknowledgement by the White House, events have been organized across the country during the month of May.

Asian contributions in the U.S. and Canada share some similarities. Asian pioneers, in particular the Chinese, played a major role in the construction of the railways in both countries, which helped to unite both nations physically and symbolically. Between 1881 and 1885, many gave their lives for what Pierre Berton described as "the National Dream." It is not hyperbole to state that without the CPR, it is likely that Canada would not exist in its present form since it was the railway that joined the west to the east, allowing for structural and political union.

Asians settled in Canada over a century ago. Invariably, like other immigrants, they came in search of a better life. Despite being initially exploited as cheap labour, communities flourished as businesses grew. Like the French and English pioneers, Asians helped to build this country with their own hands, working in Canada's natural resources industries.

The Japanese were consummate fishermen. The Chinese were involved in mining, forestry and the cannery industry. The South Asians initially worked in the lumberyards with a few opening their own mills. However, their industriousness was not always appreciated in the past and, as we all know, there were many attempts to curtail Asian immigration, as well as to limit the rights and freedoms of Asian Canadians.

When the United States passed an act to designate Asian-Pacific American Heritage month in 1992, nearly 8 million people in the United States could trace their roots to the Asia-Pacific region out of a total population of 250 million. In comparison, as of 1996, nearly 2 million Canadians, or almost 7 per cent of the population, identified themselves as being of Asian origin.

In addition, the percentage of Canadians of Asian origin in the population has increased over the last five years as Asia is now the number one source of immigrants to Canada. It will come as no surprise that the third most spoken language after English and French is Chinese, followed closely by an array of Asian languages such as Vietnamese, Tagalog, Punjabi and Tamil. With the declining Canadian birth rate, Asians will account for much of the population increase since the last census. In fact, a recent report puts the percentage of Asians on the West Coast at about 18 per cent, with the result that in the last provincial election in British Columbia, Asians of Indian, Filipino and Chinese descent competed for parties that spanned the political spectrum from left to right. In the future, Asians will continue to play an increasingly important role in the development of Canadian society.

There has been a growing recognition of the importance of the Asia-Pacific community in international trade over the last decade. Our government has paid close attention to this trend by placing an emphasis on developing linkages with this region. One of Canada's closest cultural, political and economic ties is its population of Asian descent.

As Canadians, we pride ourselves on the diversity of our nation and on our tolerance and respect for differences that we have come to realize are our greatest strength. We have even enshrined these principles in the Multiculturalism Act of 1988. Nevertheless, we have been slow to recognize the historic and present day contributions of our multicultural communities at a national and institutional level. We have been much slower than the United States which, while it describes itself as a melting pot, has established Asian-American academic programs at universities across their country.

The influence of Asians on our collective culture is evident when we examine the current state of Canadian literature. The voice of Canada, as it is reflected to the world, is increasingly multicultural. There are many writers of Asian descent who have won numerous national and international literary awards, names such as Paul Yee, Michael Ondaatje, Anita Rau Badami, Shauna Singh Baldwin, Wayson Choy and Rohinton Mistry. Joy Kagawa's moving novel, *Obasan*, changed forever the way we viewed our past and may have influenced the Japanese Canadian redress settlement in 1988. It is now required reading in many classes in Canada and across the United States.

These writers are reshaping how we define what it means to be Canadian. Canada is benefiting from the diversity of these new voices. Nationally, our culture is maturing as we recognize and integrate new visions of our past, present and future into our collective story. Internationally, we are now recognized for our dynamic literary style within which cultures overlap as the protagonists move across time and space.

Through our literature, we suggest to the world that our brave multicultural experiment is a success. This is not to suggest that

Asian contributions are limited to literature. Canadians such as Dr. Lap-Chee Tsui of Toronto, who is a major contributor to the international project in mapping the human genome, and geneticist David Suzuki of Vancouver, who hosts one of the most popular programs on the environment, have become internationally renowned for their contributions to science. Norman Kwong, of Calgary, won the Order of Canada for his contribution to football, along with entry into three sports halls of fame. Financially, Asians have influenced the Canadian business world with their innovative and entrepreneurial spirit.

Honourable senators, while the effect of this motion is largely symbolic, I believe that such symbols are necessary to indicate that our federal government remains committed to encouraging Canada's multicultural communities, both in policy and in practice.

As in British Columbia and the United States, where Asian Heritage Month has long been recognized, this motion would serve as a rallying point around which events can be organized across the country. Even more important, it would publicly acknowledge the contributions of Asian Canadians to the economic, social and cultural development of Canada as a nation.

Honourable senators, I believe it is time we recognized Asian Heritage Month. I hope you will join me in supporting this motion.

**Hon. Pat Carney:** Honourable senators, I am proud to second Senator Poy's motion that May be recognized as Asian Heritage Month.

**The Hon. the Speaker:** Before Senator Carney proceeds further, I must note that it is six o'clock. Honourable senators, is there agreement not to see the clock?

**Hon. Senators:** Agreed.

**Senator Carney:** Honourable senators, I will give a shortened version of my speech since Senator Poy and I cover much the same ground. I thank honourable senators for allowing me to put these points on the record.

B.C. is the only province to have officially designated May as Asian Heritage Month. Vancouver joins over 30 other North American cities in celebrating May as Asian Heritage Month. About 34 per cent of our population in the greater Vancouver area is of Asian descent.

During this month, Chinese, Filipino, First Nations, Hawaiian, Indian, Japanese, Korean, Polynesian and Vietnamese artists and performers have been showcasing the diversity of Asian arts and culture in Vancouver, with over 120 events staged by 40 diverse groups, companies, ensembles and organizations on the theme of common crossing cultures.



• (1800)

This year's celebration has been focusing on cross-cultural activity. Just as in times past the Chinese planted rice in Mexico and the Hawaiians worked with First Nations people in little-known relationships dating back 200 years, Asian Heritage Month will focus on the cross-cultural dimensions of contemporary work. Some of the activities include tea-tasting, martial arts, Chinese calligraphy and painting, documents, theatre, music, dance and the spoken word.

Senator Poy has talked about some of the history of Asian Canadians in B.C. The first Asian Canadians in B.C., of course, were the Chinese who arrived in the mid-1800s.

**Hon. Peter A. Stollery:** On a point of order, honourable senators, it is the hour of six o'clock.

**The Hon. the Speaker:** Senator Stollery is quite right. He was perhaps distracted when I asked if the house wished not to see the clock and it was unanimously agreed that we would not.

**Senator Stollery:** I am seeing the clock, honourable senators.

**The Hon. the Speaker:** That is an interesting point, but I would rule that the house has given unanimous leave to proceed. That has the effect of a rule of the Senate and, accordingly, we are in order to proceed without seeing the clock. That leave was granted unconditionally earlier.

**Senator Carney:** I referred to the fact that the Asian-Canadians came in the middle of the 1800s to British

Columbia: first, the Chinese with the Gold Rush and then the Japanese in about the 1870s, and the South Asians early in the 20th century. Senator Poy has covered some of their contributions.

I want to make clear to my colleagues that when we talk about Asian Heritage Month, we are talking about the present-day face of Vancouver. I made note of some of the Asian-Canadian presence in the present cityscape: There are Asian languages on our college campuses; there are Asian-Canadian faces in banks and stores; there is Asian signage on street corners and in the airports; there are the crowds at the only authentic Ming garden outside of China and the only one built in the last 400 years; there are Buddhist temples in Delta and Indo-Canadian temples in Surrey. We have the shopping centres in Richmond and Japan Town and the popular dragon boat races. There is the successful Gala social agency that does so much work with immigrants.

The Asian-Canadian presence is very much a part of our existence in Vancouver. The future of Canada and Vancouver will reflect the vibrancy, the energy and the intellectual stimulation of many of our Asian Canadians. While this may be Asian Heritage Month, I like to think that every day is Asian Heritage Day in Canada.

**Hon. Senators:** Hear, hear!

On motion of Senator Finestone, debate adjourned.

The Senate adjourned until Wednesday, May 30, 2001, at 1:30 p.m.



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CANADA

# Debates of the Senate

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OFFICIAL REPORT  
(HANSARD)

Wednesday, May 30, 2001

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THE HONOURABLE DAN HAYS  
SPEAKER



## CONTENTS

(Daily index of proceedings appears at back of this issue.)

## OFFICIAL REPORT

### CORRECTION

**Hon. Marcel Prud'homme:** Honourable senators, because many people read our debates, I asked yesterday for a correction, but I do not see it in today's Hansard. What I said yesterday would make no sense otherwise. I refer to page 927, the third paragraph, where it says in English:

Honourable senators, when you look at the geography of Canada, you can understand what the new Russia must cope with.

If I said that, it was a mistake. I ask for a correction, in both French and English, for the passage to read:

Honourable senators, when you look at the geography of Russia, you can understand what the new Russia must cope with.

As we know, Russia extends from Vladivostok to Europe. In order to understand, one must look at Russia's geography, not the geography of Canada. I want to change the word "Canada" to "Russia" so that those who read the *Debates of the Senate* in the future will know that I made sense.

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## THE SENATE

Wednesday, May 30, 2001

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

### ROUTINE PROCEEDINGS

#### MISCELLANEOUS STATUTE LAW AMENDMENT PROPOSALS

REPORT TABLED

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to lay upon the Table a document entitled, "Proposals to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal an Act and certain provisions that have expired, lapsed or otherwise ceased to have effect."

[Translation]

It would be greatly appreciated if these documents were referred to the Standing Senate Committee on Legal and Constitutional Affairs for its consideration.

#### ADJOURNMENT

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable Senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Thursday, May 31, 2001, at 1:30 p.m.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

Motion agreed to.

[English]

#### YOUTH CRIMINAL JUSTICE BILL

FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-7, in respect of criminal justice for young persons and to amend and repeal other acts.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

### QUESTION PERIOD

#### NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS—CHANGES TO BASIC VEHICLE REQUIREMENTS

**Hon. J. Michael Forrestall:** Honourable senators, my question is for the Leader of the Government in the Senate. I hope the minister has come well briefed. Yesterday, she made the point that the Maritime Helicopter Project Statement of Requirement has not changed from August 2000, and she was correct. What she would not answer is why the Basic Vehicle Requirement Specifications, or BVRS, sent to industry, and upon which they will base their bids, has changed significantly. The endurance requirement for the maritime helicopter has been dropped to 2 hours and 20 minutes, as per the BVRS 3.5.3.3.1.3.2. That number will elicit magic responses if it is tapped into the right source.

Will the minister admit that she was wrong and that the proposed maritime helicopter endurance has dropped to 2 hours and 20 minutes without operational justification?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the honourable senator continues to present the chamber each day with interesting questions. I do my very best to be briefed before and after his questions because they are always provocative. They always tweak the desire for more information on my behalf.

• (1340)

The reality is that the specifications, which I think the honourable senator is referring to, because now he seems to have gone to even more depth in his question, is the minimum requirement, which is two hours and fifty minutes, plus thirty minutes fuel reserve. That specification was sent out in August 2000.

Let us go back historically a little, which I am sure the honourable senator will respect. The Honourable Senator Stratto presented a little of the historical background yesterday. The Sea Kings were originally designed to chase Soviet submarines in North America at the height of the Cold War. We are not in the Cold War any more. The new helicopters are being designed to meet the needs of Canada in the post Cold War Era, and it is the kind of new defence policy that we have been trying to develop in this country, I thought, with the support of all parties in the chamber.

**Senator Forrestall:** Honourable senators, I have to ask if the minister is being philosophical, whether she is speaking on her own or whether she was reading that from a note. Again, I have to remind her, that the specifications that went out to the industry, and on which it will base its tenders, lowers the requirement to two hours, twenty minutes. If we want to get into that kind of a match, I can refer her to the Vice Chief of the Defence Staff, Vice-Admiral Garnett, and I can refer her to some other documents I have had in my possession for some time, while trying to deal properly with what was otherwise a private communication.

As I told the minister yesterday, ISA 20 is not exceedingly hot weather. That is 35 degrees Celsius, a nice spring day. Even in Halifax, that is a warm day, but it is not very hot.

Would the minister like to know what the average high is for Victoria or Halifax, for July and August? What about the Gulf, where we routinely deploy a frigate and a helicopter, or in the Pacific Rim? What about a part of the world that I love dearly, Barbados, where we routinely send the fleet for southern exercises? Would it be in the range of 40 degrees Celsius there? ISA 20 reduces endurance by seven minutes, not thirty minutes, as found in the Basic Vehicle Requirement Specifications, BVRS.

Can the minister tell us why this key document shows a substantial lowering of the endurance requirement, when, in fact, temperature did not have much to do with it at all? There is another reason, and we would like the minister to set us off on the right side, as I know she wants to. Could she give us some help?

**Senator Carstairs:** Honourable Senator Forrestall, I try to give you as much help as I possibly can. If the honourable senator is asking if I am reading from notes, I have to tell him that I do that on practically every single day. There is no way that, as government leader in the Senate, I can be briefed on every single department, and have all of that information at my fingertips. Therefore, yes, I depend to a great extent on notes that I receive from various government departments, and from the Prime Minister's Office. That is how I do Question Period. I have to be very clear on that.

In terms of the average temperatures and extreme heat conditions, I have never experienced a day of 100 degrees in Halifax, and I tend to use the Fahrenheit scale. I know it has become conventional for most to use the other, but I am stuck in "old think" as far as temperature calculations are concerned.

I will repeat for him that the two hours and twenty minutes with the thirty-minute fuel reserve is under extreme heat conditions, and that the base is not two hours, twenty minutes, with a thirty-minute reserve, but is two hours, fifty minutes, with a thirty-minute reserve.

**Senator Forrestall:** Honourable senators, I sometimes wonder what is the point of asking questions in this chamber. The position that the VCDS has left us with is the fact that the military requirement outlined to the government one thing, and that has now been changed.

**Senator Kinsella:** Why?

**Senator Forrestall:** Any suggestion to the contrary read to me in this chamber by the Leader of the Government in the Senate is not acceptable because it bears little resemblance to the truth. It becomes close to being evasive and misleading.

I could suggest that the execution of a simple search and rescue operation, for example, 100 miles off Sydney, Nova Scotia, where we have no extreme conditions, would take more than three hours. Would the minister just let her intelligence and her mind read between the lines, count up the distances involved, and let us know whether or not the Eurocopter, in fact, is a useful vehicle. The government may not want it to be a war vehicle. It may not want it to be a search and rescue vehicle. The government may not want it to be many things, but it was built to fit on the back of a war machine for purposes of Canada's national security and its external policies. Does the minister have a response?

**Senator Carstairs:** I do have a response, but it is unlikely to be the response that the honourable senator wants. As I have repeated for the past two days, the tender that is presently out for bid is the result of extensive military analysis to meet military requirements.

**Senator Forrestall:** And the minister changed it.

**Senator Carstairs:** We are trying to get for the military the best possible piece of equipment at the best possible price. That is not only what the military wants, but, quite frankly, it is what the taxpayers of this country want.

We have now confirmed my briefing with the procurement office. It will take place on June 11. We will still be sitting. If I get any more updated information at that briefing, I assure honourable senators that I will get it to you as soon as possible.

#### REPLACEMENT OF SEA KING HELICOPTERS—CHANGES TO BASIC VEHICLE REQUIREMENTS—EFFECT ON INVOLVEMENT OF EUROCOPTER

**Hon. Terry Stratton:** Honourable senators, certain coincidences keep occurring throughout this whole series of events, and they seem to be tied into the Eurocopter Cougar. The question to the Leader of the Government in the Senate is this: Can the Eurocopter Cougar, at its maximum gross weight, hover if it loses one engine on take-off at ISA 20?

**Hon. Sharon Carstairs (Leader of the Government):** With the greatest respect to Honourable Senator Stratton, I do not have that information, but I will ask at my briefing.

**Senator Stratton:** I will help the honourable senator out, if I can. The answer is no. I did not and would not expect her to know. However, there is a coincidence, and the perception is that the government has lowered the standard —

**Senator Di Nino:** It is a reality.



**Senator Stratton:** — to two hours and twenty minutes plus reserve, from the August 2000 SOR of two hours and fifty minutes plus reserve. The perception is out there. Why is the government skewing the competition to ensure that the Eurocopter Cougar wins? That is the perception.

**Senator Carstairs:** With the greatest respect to the honourable senator, are we skewing the process as he seems to think, or is the honourable senator a lobbyist?

**Senator Stratton:** Hold it right there.

• (1350)

**Some Hon. Senators:** Oh, oh.

**Senator Stratton:** I think the Leader of the Government in the Senate has gone a tad too far. I would have expected better from her in this chamber. I am sorry, but I think that is really beyond what I expect as regards behaviour in this chamber.

**Senator Carstairs:** Honourable senators, there is only one aircraft that honourable senators on the other side ever recommend. They apparently do not want the government to look at all possible bids. They do not want the government to look at all of the possible qualifications that other aircraft may have.

**Senator Forrestall:** That is not true.

**Senator Carstairs:** They have already made up their minds. If they have made up their minds, then clearly they are speaking for one particular company. That company is the one that they have identified as being the only one that can do the job.

Quite frankly, I applaud the government for sitting back, looking at all the potential bidders in a project and making up its mind based on best value for the military and best value for the Canadian taxpayer.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I take exception to the remark that we are here promoting one company over the others. We are trying to find out why one company has been eliminated from the bidding process. That is the question before this house.

**Senator Carstairs:** No company has been eliminated from the bidding process. The bidding specifications are out. All companies that have the potential to bid on this project are being given the opportunity to do so. When those bids come in, all of those bids will be looked at in an appropriate fashion, and then a decision will be made.

**Senator Lynch-Staunton:** It is quite obvious that the bidding requirements have been tailored in such a manner that one company in particular will have great difficulty in meeting the specifications with whatever equipment it can offer.

I would like the Leader of the Government in the Senate to take back any suggestion she has made that this side is representing the interests of one company in particular. We are representing the unfairness of the bidding process, which may eliminate more than one company and favour others. We are trying to get from the government a denial that the process has been tailored in such a way that some companies are being favoured and at least one being disfavoured.

**Senator Carstairs:** There are no companies being favoured by this government; there are no companies being disfavoured by this government. The military analysis has been completed. The specifications have been put out. Bids will be brought in on the basis of those specifications. All will be included in the process.

**Senator Lynch-Staunton:** Finally, will the Leader of the Government in the Senate take back her suggestion that we are favouring one company over any other?

**Senator Carstairs:** I will take it back if senators on the other side will not consistently, in their questions, give only commentary on one particular aircraft, over and over again.

**Senator Lynch-Staunton:** We have not heard that.

#### REPLACEMENT OF SEA KING HELICOPTERS—CHANGES TO BASIC VEHICLE REQUIREMENTS

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I must confess that I know nothing about helicopters. I know nothing about a lot of things, and helicopters are on that list.

What I have been hearing in Question Period in this house is that the Government of Canada has changed the specifications of the helicopters that they are seeking to acquire in replacement for the Sea Kings. Would the minister either confirm or deny that those specifications have been changed?

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his question. Let me make it clear that I am certainly not an expert on helicopter technology either. We share our lack of detailed knowledge on that particular file.

The issue is whether the specifications have been changed at any time. The answer is yes. If one looks at the original requirements for the Sea Kings when they were originally built many years ago and asks, "Is this what we need for now?" then yes, one could say that the requirements have been changed.

What I said yesterday, and what Honourable Senator Forrestall agreed with today in his question, is that the bidding process was put out in August of 2000, and those specifications have not been changed since then.

**The Hon. the Speaker:** Senator Forrestall, our rules provide only one question per Question Period.



**Senator Forrestall:** That question will not remain on the floor of this chamber unanswered by the Leader of the Government. I have a question of privilege, and I will give it some consideration. I resent that very much. In my thirty-seven years as a legislator, I have never run up against such stubbornness or such mule-headedness. This government could not care less about the military. The Leader of the Government in the Senate does not care enough to obtain a briefing from people who understand what is going on. Perhaps it is time that she did.

## AGRICULTURE AND AGRI-FOOD

### DOWNTURN IN GRAIN SEED AND OILSEED SECTORS

**Hon. Leonard J. Gustafson:** Honourable senators, I should like to ask a question about the state of agriculture. I myself have spent a couple of weeks out there in my fields, seeding. I have also been talking to a lot of young farmers, and I must tell you that I have never before seen them so discouraged and depressed to the point where they did not know what to seed.

I returned here yesterday to read in the the *National Post* that farm income is on the rise. Before I left Regina, I read in the *Leader-Post* that the average income for farmers is \$7,000 per year, and that includes off-farm income.

We are facing a very serious national problem. I have yet to meet a farmer who has received the monies that were supposed to be put in place by the government to help plant the crop. I can tell you, Madam Minister, that agriculture is in big trouble, especially in the grains and oilseeds sectors. There is some positive movement in the cattle industry, and so on, but in grain seeds and oilseeds, the input costs will not be returned unless something happens in terms of the marketplace. My question is very simple: Does the government feel that this is an acceptable situation?

**Senator Stratton:** Let them grow cake.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the questions raised by Senator Gustafson today are important because this is an example of where a media story can be very misleading. The media story said that farm income had increased. In fact, if one looks at all farm income across the country, yes, farm income has increased. However, if one looks at crop income versus livestock income, crop income has gone down to a six-year low and livestock revenues have gone to a record high. That is where the media confused the situation and, regrettably, that gives Canadians who are not in the farm economy the sense that things are fine on the farm. Senator Gustafson and I, both coming from rural provinces, know that that is simply not the case.

In terms of the monies that have not been received by farmers for planting the crop, I did not know that that money had not yet been received. I thought it had been sent out. I will try to get an answer for honourable senators on that point as quickly as possible.

As to the question with respect to the marketplace, the government, as you know, has poured more money into subsidies in the last several years than has ever been done before. However, that is simply not addressing the overall concerns of the marketplace. That is why the Prime Minister has put together a task force of our own caucus members to get out to speak with farmers. Three members of this chamber are members of that task force, and I am hopeful that we can come up with some positive ideas for change in the future.

**Senator Gustafson:** As a supplementary question, honourable senators, the minister is right. The grains and oilseeds sector has really taken an awful blow in these last six years. The problem that is arising is bigger than just farming. It is with respect to rural Canada. What is happening to rural Canada? It is the responsibility of the government to communicate to the people of Canada that we have a problem so that there is the political will to do something about it.

• (1400)

We are already losing farmers and, although a farmer does not lose a crop in May, the outlook is not very good. If there is a drought on the Prairies, farmers will go down like I have never seen in my 50 years of farming.

Has the government a plan in place for long-term support in regard to this very serious situation?

**Senator Carstairs:** Honourable senators, we clearly need some new and innovative ideas that will change the direction in agriculture. That will not happen overnight.

Last evening, I was watching the CBC and saw an interesting presentation on a genesis project in Senator Gustafson's province. It was about young farmers being aided by church groups. One young farmer is renting his land at a nominal price from the church in order to get a start. That farmer is in the livestock industry. He is growing alfalfa and hopes to eventually develop livestock.

That is the kind of innovation, honourable senators, that we will have to consider. That is the kind of innovation that I hope the Senate Agriculture Committee will look into. It is also the kind of project that this task force will look into.

**Senator Gustafson:** Honourable senators, I phoned Ralph Goodale today and suggested that he send a representative to the meeting in Saskatoon that is considering areas into which farmers can diversify. We have talked about diversification for a long time and farmers have tried to diversify. We have tried canola, mustard and various other crops. However, there has not been an effective long-term program on the Prairies since we lost the GRIP program.

As an example, in my situation and that of most farmers, crop insurance will only cover about one-third of the input costs for planting a crop this spring. There are no long-term programs to help agriculture through the difficult times and then be reimbursed in the good times.

**Senator Carstairs:** Honourable senators, Senator Gustafson spoke of diversification. I am surprised that he did not mention the phrase "value-added" because those two buzzwords have been marketed in Western Canada for a long time. We have heard repeatedly that if everyone would just diversify or get into value-added production, that would solve agricultural problems in perpetuity.

That is not enough, honourable senators. That will not solve agricultural problems in either the short term or the long term.

I hope that Minister Goodale accepts Senator Gustafson's suggestion to send a representative to the meeting in Saskatoon because we must come up with and carefully examine new and innovative ideas.

## FOREIGN AFFAIRS

### UNITED STATES—MISSILE DEFENCE SYSTEM—AVAILABILITY OF BRIEFING PAPERS DESCRIBING PROPOSAL

**Hon. Douglas Roche:** Honourable senators, my question is directed to the Leader of the Government in the Senate. On May 17, in Question Period, I raised the issue of the briefing that an American team gave Canadian officials on the missile defence system. I asked whether they left documentation with Canadian officials that could be made available. The minister undertook to inquire into the availability of such documentation.

I repeat the question today. In the House of Commons on May 15, the Prime Minister said that briefings given by U.S. officials should be made available to parliamentarians as well as the public so that the public can be informed and we can have a debate on this very important issue.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not have information available for Senator Roche today. We requested it the very day he asked the question. We are trying to answer questions as quickly as we can. However, there is some good news that reflects well on what is happening on this file.

Minister Manley joined with his NATO counterparts only "...yesterday in telling the United States its proposed ballistic missile defence system will have to demonstrably increase global stability before it gets alliance support." There appears to be a firming up of the position that the United States must do better than it has done thus far. Some of us also take a little hope from what has happened recently in the American Senate.

### UNITED STATES—MISSILE DEFENCE SYSTEM—COMMENTS BY MINISTER AT MEETING OF NATO FOREIGN MINISTERS

**Hon. Douglas Roche:** Honourable senators, will the minister undertake to make available comments made by the Canadian Minister of Foreign Affairs to the NATO meeting yesterday?

I reiterate my urgent request for the original documentation that the American officials "probably" left with Canadian officials.

**Hon. Senator Carstairs (Leader of the Government):** Honourable senators, I have no information as to whether the American officials left material behind. I have no more information on that matter than does the honourable senator, although I have made the request. I will make a further request for the comments of the Minister of Foreign Affairs, and I will attempt to get both sets of information to the senator as soon as possible.

## AGRICULTURE AND AGRI-FOOD

### GOVERNMENT ASSISTANCE TO FARMING INDUSTRY

**Hon. Herbert O. Sparrow:** Honourable senators, the Leader of the Government in the Senate has suggested that some new and innovative ideas might come forward to assist the agriculture industry. Would the minister take back to the cabinet the innovative idea that more money should be put into the agriculture industry? That innovative idea might include returning to the level of assistance that farmers were getting in 1995. Agricultural assistance has dwindled to a very small amount of money, yet we keep hearing that the amount of assistance has increased. It is not even close to the 1995 level.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I hate to be the one to give the very bad news that putting more money in is not considered a particularly innovative initiative. It may be a good initiative and a very positive initiative, but it is not terribly innovative. That solution has been tried in the past and has not been terribly successful.

I know that Senator Sparrow will agree that the 1995 figures were higher because of a special program.

[Translation]

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable Senators, I have the honour to table delayed answers to five questions on the Commission on the Future of Health Care in Canada, namely: the question raised by Senator Kinsella on April 3, 2001, on the involvement of the Senate Committee; the question raised by Senator Keon on April 5, 2001, on the schedule of issues to be reviewed; the questions raised by Senators Robertson and Murray on April 4 and 5, 2001, on the terms of references and the question raised by Senator Andreychuk on April 5, 2001, on the mandate of the commissioner.



## HEALTH

POSSIBILITY OF STUDY ON NATIONAL  
PROGRAM—INVOLVEMENT OF SOCIAL AFFAIRS,  
SCIENCE AND TECHNOLOGY COMMITTEE

*(Response to question raised by Hon. Noël A. Kinsella on April 3, 2001)*

As most of the recent health care system studies have focussed on the immediate pressures, the Commission will build on those studies, but concentrate its work on the longer term. The first part of the Commission's work will focus on fact-finding; renewing and updating all the relevant research that has been done here in Canada and elsewhere. The second part of the Commission's work will focus on consulting with Canadians and undertaking the key questions in order to formulate recommendations.

The work of the Senate Committee on Social Affairs, Science and Technology and the Commission will be complementary. Clearly, the question of how to ensure the sustainability of Canada's health care system encompasses a very broad range of considerations that will benefit from the different perspectives that each review will bring. Given the importance of health and access to health services to Canadians, it is appropriate to be looking into how to ensure the long-term sustainability of our health care system.

Further information regarding the Commission on the Future of Health Care in Canada can be accessed through their website at: <http://www.healthcarecommission.ca>.

COMMISSION ON THE FUTURE OF  
HEALTH CARE—REQUEST FOR SCHEDULE OF  
ISSUES TO BE REVIEWED

*(Response to question raised by Hon. Wilbert J. Keon on April 5, 2001)*

The Commission on the Future of Health Care in Canada has been tasked with recommending policies and measures required to ensure a sustainable, universally, publicly funded accessible health system over the longer term, a system that offers quality services to Canadians and strikes an appropriate balance between investments in prevention and the maintenance of health with investments in care and treatment.

In addition to its review, the Commission has been asked to conduct a dialogue with Canadians. Given the importance of health and access to health services to Canadians, it is appropriate to be seeking their views now on our health care system. In a statement by Mr. Romanow on May 1, 2001, he clearly stated his intention to review all aspects of the Canadian health care system.

Further information regarding the Commission on the Future of Health Care in Canada can be accessed through their website at: <http://www.healthcarecommission.ca>.

STUDY OF NATIONAL PROGRAM—MANDATE OF  
COMMISSIONER—COMMISSION ON THE FUTURE  
OF HEALTH CARE—TERMS OF REFERENCE

*(Response to questions raised by Hon. Brenda M. Robertson on April 4, 2001, and Hon. Lowell Murray on April 5, 2001)*

Established under Part 1 of the *Inquiries Act*, the Commission on the Future of Health Care in Canada, chaired by former Saskatchewan premier Roy Romanow, will report to Canadians and Parliament through the Prime Minister. Mr. Romanow will be the sole Commissioner.

The Commission's mandate is to inquire into and undertake dialogue with Canadians on the future of Canada's public health care system, and to recommend policies and measures respectful of the jurisdictions and powers in Canada required to ensure over the long term the sustainability of a universally accessible, publicly funded health system, that offers quality services to Canadians and strikes an appropriate balance between investments in prevention and health maintenance and those directed to care and treatment.

For your reference, a copy of the Order in Council authorizing the Commission is attached.

Further information regarding the Commission on the Future of Health Care in Canada can be accessed through their website at: <http://www.healthcarecommission.ca>.

*(For text of Order in Council, see appendix, p. 981)*

COMMISSION ON THE FUTURE  
OF HEALTH CARE—MANDATE OF COMMISSIONER

*(Response to question raised by Hon. A. Raynell Andreychuk on April 5, 2001)*

Established under Part 1 of the *Inquiries Act*, the Commission on the Future of Health Care in Canada will report to Canadians and Parliament through the Prime Minister.

The Commission's mandate is to inquire into and undertake dialogue with Canadians on the future of Canada's public health care system, and to recommend policies and measures respectful of the jurisdictions and powers in Canada required to ensure over the long term the sustainability of a universally accessible, publicly funded health system, that offers quality services to Canadians and strikes an appropriate balance between investments in prevention and health maintenance and those directed to care and treatment.



The Order in Council which established the Commission provides the Commissioner, Mr. Romanow, the ability to appoint advisors; rent space and facilities; engage the services of experts; and directs the Commission to file papers and records of the inquiry with the Clerk of the Privy Council as soon as is reasonably possible after the conclusion of the inquiry.

For your reference, a copy of the Order in Council authorizing the Commission is attached.

Further information regarding the Commission on the Future of Health Care in Canada can be accessed through their website at: <http://www.healthcarecommission.ca>.

(For text of Order in Council, see appendix, p. 981)

[English]

## PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

**The Hon. the Speaker:** Honourable senators, I should like to introduce a guest page from the House of Commons. Janina Kanonas, on my right, is pursuing her studies in finance at the University of Ottawa, in the Faculty of Administration. Janina is from Saint-Hubert, Quebec.

• (1410)

## POINT OF ORDER

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I rise on a point of order. I do not think it was only on this side that there was a bit of shock when the Leader of the Government suggested that Senator Stratton was a lobbyist for a particular company. I would ask His Honour to rule whether or not the Leader of the Government was out of order — not to say something else — in suggesting that one of our colleagues was asking questions in this chamber to favour the interests of a particular private corporation. I find that suggestion to be not only false but one that should not even be considered as part of our debate.

**The Hon. the Speaker:** Do other senators wish to intervene or comment on the point of order raised by Senator Lynch-Staunton?

**Hon. J. Michael Forrestall:** Honourable senators, to the degree that the comment in question was broad and encompassing, and inasmuch as the Senate will be aware of the number of times I have risen to my feet in an attempt to get an answer to one or two simple questions, I consider that comment

and observation to include me. Indeed, I am left with a sense that perhaps I provoked the comment.

I want to leave honourable senators with the sense that I must now consider my own privilege. I will do that over the next day or two because I am offended. I feel that members of the Canadian Armed Forces have been offended by that comment. I feel that the air industry in North America and in Europe has been offended. If the Leader of the Government has some demonstration to prove otherwise, I wish she would bring it forward, or cease and desist.

**The Hon. the Speaker:** Honourable senators, if there are no other comments, I will make a comment from the Chair. Before I do so, however, I wish to draw to Senator Forrestall's attention the *Rules of the Senate* as they relate to privilege and the requirement of raising a question of privilege at the first opportunity. I make that observation, given that Senator Forrestall has claimed privilege as an issue.

Honourable senators, I will now comment on the matter raised by Senator Lynch-Staunton. His point of order related to parliamentary language and an accusation, or not by the Leader of the Government in the Senate. Senator Carstairs, in answering a question by Senator Stratton and stating "or is the honourable senator a lobbyist?" I am relying on memory, but I believe those were the words.

Honourable senators, this matter is of sufficient importance that I should like an opportunity to review the record to confirm whether I have stated correctly what was said. I wish also to observe that I am on my feet commenting on the point of order in the absence of the senator who is the subject matter of the point of order. Perhaps it would be better if I dealt with this issue when Senator Carstairs is present in the chamber.

Senator Carstairs is now present in the chamber. With the permission of honourable senators, I would invite her, if she wishes, to comment on the point of order.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not know exactly what the point of order was about, but if anyone has taken offence at my comment, I gladly apologize to individual senators and to the Senate as a whole.

**Senator Lynch-Staunton:** The point of order was based on the fact that the Leader of the Government in the Senate strongly suggested that Senator Stratton's questions were the result of his lobbying for a particular company. That kind of accusation does not need only an apology; it must be withdrawn. That was the disorder that was created in this chamber.

**Senator Carstairs:** Honourable senators, I withdraw unequivocally the suggestion that Senator Stratton — because I think it was Senator Stratton — was acting as a lobbyist.

## LIBRARY OF PARLIAMENT

[Translation]

## FIRST REPORT OF JOINT COMMITTEE PRESENTED

Leave having been given to revert to Presentation of Reports from Standing or Special Committees:

**Hon. John G. Bryden**, Joint Chair of the Standing Joint Committee on the Library of Parliament, presented the following report:

Wednesday, May 30, 2001

The Standing Joint Committee on the Library of Parliament has the honour to present its

## FIRST REPORT

Your Committee recommends that it be authorized to assist the Speaker of the Senate and the Speaker of the House of Commons in directing and controlling the Library of Parliament; and that it be authorized to make recommendations to the Speaker of the Senate and the Speaker of the House of Commons regarding the governance of the Library and the proper expenditure of moneys voted by Parliament for the purchase of books, maps or other articles to be deposited therein.

Your Committee recommends that its quorum be fixed at seven (7) members, provided that both Houses are represented including a Member from the Opposition as well as a Senator from the Opposition whenever a vote, resolution or other decision is taken, and that Joint Chairs be authorized to hold meetings to receive evidence and authorize the printing thereof as long as (4) Members are present including a Member from the Opposition.

Your Committee further recommends to the Senate that it be empowered to sit during sittings of the Senate.

A copy of the relevant Minutes of Proceedings (*Meeting No. 1*) is tabled.

Respectfully submitted,

SENATOR JOHN G. BRYDEN  
RAYMOND LAVIGNE, M.P.  
*Joint Chairs*

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Bryden, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

NATIONAL NETWORK OF  
FRANCOPHONE TELEVISION

NOTICE OF INQUIRY  
LEAVE HAVING BEEN GRANTED TO REVERT  
TO NOTICES OF INQUIRIES:

**Hon. Jean-Robert Gauthier:** Honourable senators, I give notice that two days hence, I will call the attention of the Senate to the needs of a national network of francophone television: le réseau des Francophonies canadiennes.

## THE SENATE

NOTICE OF MOTION TO CHANGE RULE 25

Leave having been granted to revert to Notices of Motions:

**Hon. Jean-Robert Gauthier:** Honourable senators, I give notice that on Tuesday next, June 5, 2001, I will move:

That the *Rules of the Senate* be amended, by adding the following:

25.(1.1) A Senator may request that the Government respond to a specific question placed on the Order Paper within forty-five calendar days by so indicating when filing his or her question.

[English]

• (1420)

## ORDERS OF THE DAY

## CANADA SHIPPING BILL, 2001

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Callbeck, seconded by the Honourable Senator Bacon, for the second reading of Bill C-14, respecting shipping and navigation and to amend the Shipping Conferences Exemption Act, 1987 and other Acts.

**Hon. W. David Angus:** Honourable senators, I am pleased to have this opportunity to make some observations on Bill C-14, which provides for a new and modernized Canada Shipping Act and for necessary amendments to the Shipping Conferences Exemption Act, 1987, otherwise known as SCEA.



As an honorary life member of the Canadian Maritime Law Association and as an active practitioner of maritime law in all its aspects for some 40 years, I have been intimately involved with the old Canada Shipping Act and the various related shipping and maritime statutes and treaties. In addition, as most honourable senators know, I have had occasion over the past two or three years, to make many comments in this chamber, as shipping legislation has come our way as part of the government's major initiative to modernize Canada's maritime legislation and harmonize it with the laws and regulations of our many trading partners. This process has included legislation to implement a number of key international treaties and conventions which Canada signed on to but had not yet made part of our law, and generally a series of measures to enable Canada's maritime law framework to reflect contemporary public standards and needs.

I listened with interest yesterday to Senator Forrestall's speech on this important bill, and I subscribe wholeheartedly to the points he has made and the issues he has highlighted for special attention in committee. I also endorse the comments made by Senator Callbeck in her speech on May 17.

Although Bill C-14 is not perfect in all respects, it is excellent in principle, and I am sure any shortcomings can be readily rectified at or during the committee process.

Honourable senators, Canada's marine industries and our maritime community at large welcome Bill C-14 with considerable enthusiasm and approval, as do I. This legislation has been long awaited and represents the product of a major and well-conceived and conducted project by officials in Transport Canada in cooperation with their colleagues in the Department of Fisheries and Oceans.

The initiative to modernize Canada's shipping laws has been ongoing for more than two decades. I can even remember making representations here in Ottawa as to appropriate Shipping Act reforms, maybe as early as the late 1960s, when a Mr. John Mahoney had been engaged to conduct a study and prepare a report on modernizing the Canada Shipping Act.

The current project has been the most comprehensive endeavour, and it has been particularly active and focused during all of the last five or ten years. I wish particularly today to commend and salute the officials for their dedicated, excellent and thorough work, including their in-depth consultations with key stakeholders and operators in the industry both in Canada and abroad.

With the enactment of Bill C-14, following on the heels of the Marine Liability Act — in this Parliament it was Bill S-2 — and the Canada Marine Act of two years ago, Canada will once again, at long last, be at the leading edge in its capacity to participate in a modern fashion in the international maritime community, to honour its international obligations and to deal with critical contemporary issues such as maritime pollution

response, clean up and control, and protection of the environment.

In addition, the new Canada Shipping Act will enhance Canada's ability to engage in port state control activities that are designed to protect the safety of life and property at sea and of those engaged in maritime adventures. This is particularly important for Canada, which today is playing a leading and high profile role at the International Maritime Organization, the intergovernmental organization under the umbrella of the United Nations, headed up by our own William A. O'Neil, as Secretary-General. We are also active in other multilateral international organizations that are committed to uniformity and harmonization of maritime laws around the world. As well, we have an extensive coastline in the east, west and north. We are a major trading nation, relying heavily on the movement of our import and export goods by sea.

Honourable senators, I believe it is particularly fitting and appropriate that the new Canada Shipping Act is having its passage, and it is hoped a smooth one, through Parliament at this particular time, just as the Canadian Maritime Law Association is celebrating the fiftieth anniversary of its creation. A major celebration of this anniversary will take place on June 15 and 16, 2001, in Montreal. The association has worked cooperatively with Transport Canada and Fisheries and Oceans for years to endeavour to help get this legislation right so that it will not only meet the needs and exigencies of today's world but also that it will suitably endure the tests of time, and will serve Canada and its maritime industries well, going forward, especially in light of projected new technologies and natural phenomena such as global warming and consequentially changing climatic conditions.

The concept of a northwest passage for international shipping through Canada's Arctic waters has long been dreamed and written about by hardy seafarers and adventurers. With global warming and its potential far-reaching consequences, scientists are today telling us that such a northwest passage may no longer be simply a pipe dream. In as few as 20 years, some say, there may be sufficient changes in our ice conditions in the far north to permit a viable, deep sea navigation season of two to four months annually through the Canadian Arctic. The availability of such a sea route would reduce by as much as 5,000 miles the voyage of a container vessel travelling from Rotterdam, Holland to Yokohama, Japan. Imagine the fuel savings and other dynamic social and economic consequences of such a development.

Officials at the Canadian Maritime Law Association are today openly referring to the potential for a "Canama" canal, through Canada's Arctic, as a consequence of contemplated conspicuous changes in Arctic ice patterns due to global warming. As part of the CMLA's fiftieth anniversary celebrations, they are holding a seminar on this very subject in Montreal on Saturday, June 16. I will be there, honourable senators, to see just what they have to say on the subject.



In the meantime, it is important that Canada have on its books appropriate laws and regulations so that we may deal efficiently with any and all contingencies, be they environmental, navigational or socio-economic, which may or undoubtedly will arise in the event that a "Canama" canal does come to pass.

As to the proposed amendments to the Shipping Conferences Exemption Act, SCEA, these appear to be in order and the logical extension of a process which has been ongoing in this country since at least 1971 when Canada's first SCEA was enacted to exempt international shipping conferences from the applications of certain provisions of Canada's then antitrust legislation.

In the interim, there have been new or amended versions of SCEA enacted in 1979 and 1987. In each case, extensive study, consultation and research was carried out by government officials together with interested stakeholders to give effect to a periodic review process as mandated in each of the SCEA statutes.

The main thrust of the amendments in Bill C-14 for the SCEA legislation is to ensure that Canada's legislative provisions exempting conferences from competition law restrictions are in line with those in force in the U.S., the U.K. and other nations in Europe and elsewhere with whom we do business. It is my understanding and belief that the current proposed amendments will accomplish this effectively once again, as with the new SCEA in 1987.

Shipping conferences, honourable senators, are organizations of liner-ship operators that provide a service on a regular basis between two or more ports in different countries. They need to have the capital assets to be able to operate a regular service. To be able to provide services on these routes on a regular basis, the shipowners need some certainty, such as stability of the rate structure among other conditions that apply on these routes. It was for these reasons that, over the years, shipowners were able to prevail upon governments that had competition restrictions to provide them with an exemption, so that they would be induced to make the investment in modern tonnage that could ply these routes as liner operators.

• (1430)

Therefore, honourable senators, we fell into this mode in 1971 with our first exemption statute. As I said, we have repeated it every several years, as contemplated in the act, which provides, not for a sunset clause whereby the act would disappear at the end of the period, but, rather, for a review as to how these laws are applied, and for their modernization in the current circumstances. That is what this act does and I support it.

Honourable senators, the enactment of Bill C-14 will not fully, finally and forever conclude the modernization of Canada's shipping laws. There is still considerable important work to be done, including, for example, the implementation by Canada,

through appropriate legislation, of the international treaty relating to the United Nations Conference on the Law of the Sea, UNCLOS.

I understand that this and other key and much-needed measures are in the works and will reach Parliament in the very near future. In the meantime, Bill C-14 is a fundamental milestone in that process. I recommend its immediate referral to the Standing Senate Committee on Transport and Communications, where I know it will receive thorough and well-advised study.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Callbeck, bill referred to the Standing Senate Committee on Transport and Communications.

### FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Rompkey, P.C., seconded by the Honourable Senator Finestone, P.C., for the second reading of Bill C-18, to amend the Federal-Provincial Fiscal Arrangements Act.

**Hon. John Buchanan:** Honourable senators, Bill C-18 is a very simple, one-page bill that removes a cap on equalization payments for one year. That, of course, ensures that the cap goes back on in other years, at least until the year 2004. In addition to removing the \$10-billion ceiling, it also frees up about \$800 million for transfers to provinces such as Newfoundland, New Brunswick, Nova Scotia, P.E.I., Saskatchewan and Manitoba. It is a short bill of several paragraphs. It is something that we should be able to deal with rather quickly.

However, it is not that easy. There is something below the surface of this bill that I think is very important for the Senate to discuss.

Equalization and regional disparity programs have been in this country for over 40 years. I believe they commenced back in the late 1950s, and continued through the 1960s up to 1967, and through the 1970s and 1980s. We are very fortunate in this country to do something that other countries were not able to do, and that is enshrine in our Constitution the principle and the substance of equalization. There is no question that that principle is a cornerstone of the social and economic life of this country.

I believe the present Prime Minister of Canada, when he was Minister of Justice, while at a conference on the subject called "equalization" the fabric of Confederation. Indeed, it is, and there is no question about that. We enshrined it back in 1982. It is important that we take a serious look at what was enshrined at that time.

I will not read the whole of section 36. I recall it very well, as well as the discussion through 1979 to 1982 that made it possible for us to enshrine the principle of equalization and regional disparity. Senator Beaudoin was there; he is not present at this time. Senator Kirby was there. Senator Carney was there. Senator Carney and I signed many energy agreements that helped Nova Scotia over the years, and without her help they would not have occurred.

What did we enshrine? We enshrined the principle that the levels of government in this country are committed to promoting equal opportunities for the well-being of Canadians; promoting further economic development to reduce disparity in opportunities; providing essential public services of reasonable quality to all Canadians; and we are committed to the principle of equalization payments that ensure that provincial governments have sufficient revenues to provide reasonable, comparable levels of public services at reasonable, comparable levels of taxation.

Senator Kirby will recall some of the great discussions we had at the conference centre before we arrived at the right wording of those particular sections. At times we were helped by — it is interesting how life works — people such as Senator Beaudoin, who as a constitutional expert was advising the Government of Canada at the time, with then Prime Minister Trudeau in the chair.

One thing we must remember is that equalization is but one of the major tiers of federal-provincial sharing. The other programs, which we called EPF programs, would basically make up the block funding for medicare, health services, education and social services. When we discuss equalization in terms of what the program has done to ensure that section 36 has been adhered to — and that is providing essential public services of reasonable quality to all Canadians — we also have to look from time to time at the other programs of provincial-federal sharing to see what has happened to those programs over the past 20 years.

What is equalization? I am not an expert on equalization. I listened over the years to many experts discussing how it works, but I will tell you this: It is very complicated. It takes more than one chartered accountant to explain what it is all about.

According to a formula in legislated regulations, provinces with revenue-raising capacities below a standard receive an equalization transfer from the federal government to bring their per capita fiscal capacity up to the standard. Fiscal capacity is measured by examining the ability to raise revenue from about 30 tax bases or revenue sources. The standard measure is the

fiscal capacity of the five middle provinces: Quebec, Ontario, Manitoba, Saskatchewan and British Columbia.

• (1440)

The principle underlying equalization is that the federal government has a responsibility to ensure that each province has adequate revenue to provide a minimum level of public service without recourse to exceptionally high levels of taxation. This is accomplished through unconditional grants that make up the difference between actual provincial taxes or revenues and some measure of the highest average or representative levels of the same tax rates or revenues.

Equalization associated with each revenue source is determined as the difference between the average per capita yield of a revenue source in the standard set by the five middle provinces and the per capita yield in that province — Newfoundland, Nova Scotia, New Brunswick, et cetera. The amount is calculated for each revenue source. The per capita difference and excesses — because there are excesses — for all revenue sources are combined.

When a province has a net per capita deficiency, that deficiency is multiplied by the provincial population to determine the equalization entitlement. Through that exercise each year, it is determined that Alberta, Ontario, and British Columbia have no equalization entitlements.

I think honourable senators will agree with me when I say that it is a very simple situation. I do not understand much of what I just said, but I know that the system works. We have had it for a long time, so it must work. Is that not right, Senator Rompkey?

I remember attending a federal-provincial conference. The Minister of Finance was explaining the formula, and one of the premiers asked that the minister repeat the explanation in simple English. The minister replied that he could not because he would need to speak to his bureaucrats to find out what he had said.

Honourable senators, equalization is a complicated process. In simple terms, equalization is designed to provide a province with the per capita revenues that it would receive from its own revenue sources equal to the per capita revenue set by the standard. That is the principle of equalization.

Has it worked? Yes and no. Unfortunately, over the years, equalization has not worked as well as we anticipated, or hoped, because we still have a disparity between many of our provinces. There is not the equality that we would like to see and there probably never will be.

Let me talk about Nova Scotia and Newfoundland. We have a rather special situation. We are protected for a 10-year period when our accords trigger. That would bring Nova Scotia to the year 2004. Until that time, there is a reduction in the clawback. The ratio was 90 per cent to 10 per cent, then 80 per cent to 20 per cent, and so forth through to the year 2004 when the dollar-for-dollar formula kicks in.



Some say that this is a bad formula. It certainly is if one looks at what has happened in the last 10 years or 15 years in this country.

The same technique is applied in Newfoundland. I believe that the clawback in that province is currently about 25 per cent because of new revenues. In Nova Scotia, the clawback is 20 per cent to 25 per cent.

When those accords were put into effect, it was anticipated that there would be changes in the equalization formula at the end of the 10-year period. The finance minister has said that there will be no changes in the equalization formula at the present time, but he has not said that there will be no changes. He said that there will be changes in the equalization formula in the year 2004.

Those changes, of course, must ensure that those provinces that have been lagging behind while others have been steaming ahead will be assisted. Those changes must ensure that this gap of disparity is closed.

Also, we must ensure by 2003 or 2004, when there will be a new equalization formula, that the changes will enable provinces like Nova Scotia and Newfoundland to take more advantage of their new resources. It was always anticipated that Nova Scotia and Newfoundland would receive 100 per cent of all offshore resources, whether rentals, royalties or through provincial taxation. We were to get it all. We will be striving for changes over the next two years or three years.

Honourable senators, why should that be? Why should we not lose dollar for dollar at the end of the 10-year period? Let me tell senators why.

I was in the provincial legislature when programs for medical care and hospitalization came into being in the late 1950s and 1960s. The cost of those programs was shared 50-50 by the provincial and federal governments. The provinces would raise funds by direct taxation in the form of a sales tax, which at that time was called a "hospital tax" in Nova Scotia, to pay for medicare and hospitalization. The same applied in the other provinces.

That system is entirely in keeping with what was enshrined in the Constitution in 1982. Equalization addressed regional disparities in the provision of essential public services of reasonable quality to all Canadians. Thus, equalization must be tied in one way or the other to federal-provincial cost-shared programs.

Honourable senators should note that the 50-50 cost-sharing arrangement shifted during the 1970s and the early 1980s. There was a shifting of tax points to the provinces that accounted for some of the increased payments by the provinces. The provincial share has risen from 50 per cent up about 65 per cent. In the last 10 years, the balance has shifted even more. A province such as Nova Scotia is now paying approximately 87 per cent of these

cost-shared programs and the federal government is paying 13 per cent.

What does that mean? It means that the provinces must rely more and more on unconditional grants.

**The Hon. the Speaker:** Honourable senators, I am sorry to interrupt the Honourable Senator Buchanan, but his 15 minutes have expired. Does he wish to continue?

**Senator Buchanan:** Yes.

**The Hon. the Speaker:** Is leave granted, honourable senators?

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, as we have been in the habit of doing recently, particularly with shorter sittings, we certainly consent to an honourable senator being allowed a reasonable additional amount of time in which to conclude his speech. This should not drag out into an endless question period.

[English]

**The Hon. the Speaker:** Leave is extended for a reasonable period of time.

**Senator Buchanan:** Honourable senators, the cost-sharing programs have not been working in the favour of the provinces, particularly the Atlantic provinces. I am not in any way shutting out the Western provinces, but we do have the problems of health care and other matters in the Atlantic provinces.

• (1450)

How will that be resolved, honourable senators? It is quite obvious that the federal government will not do much to shore up our problems with health care over the next few years. The federal government put new dollars in, but that only served to restore what we had in 1994. We remain in a position whereby the provinces pay over 80 per cent, and the federal government pays between 12 per cent and 15 per cent, depending on the individual province.

This funding has not actually been restored, but there has been a shift, and the provinces must use part of their equalization monies to bring them up to the reasonable standard as set out in section 36 of the Constitution. Thus, that disparity — the gap — between some of our provinces, must be reduced.

Honourable senators, it is interesting to note that in Nova Scotia and Newfoundland, we could do that on our own, over the next number of years. We are currently transmitting some 500 million cubic feet of natural gas per day, by pipeline to the New England states. That will escalate to approximately 1 billion cubic feet of natural gas within the next three or four years. If we are able to solve our problems between Newfoundland and Nova Scotia, there will be an additional 10 to 15 trillion cubic feet of natural gas available, located between Cape Breton and Newfoundland.



We can do it alone; we can stand on our own two feet. That was the idea throughout the 1980s — that we could do it alone. However, we need assistance to close that gap for a few years. That is why, when the equalization discussions are underway in the next year or so, I am hopeful that that will be taken into consideration. I am hopeful that, as during the 10 years from 1994 to 2004, there will be another period of time during which we will not face clawbacks until we are able to fully stand on our own two feet, in an economic sense.

Honourable senators, it is not too much to ask for provinces such as Nova Scotia, Newfoundland and New Brunswick. The latter will have IT programs that will prove to be revenue producing. It is time for the whole country to assess the situation and do something to ensure that these provinces do not simply receive handouts.

However, we will be able to stand on our own two feet, in an economic sense, based on our own resources, and we are hopeful that they will not be clawed back. Newfoundland is expecting to achieve that goal also. We can achieve that in the next two or so years, and then we can have a new equalization formula that ensures a resolution to the disparity between “us and them.”

Honourable senators, what shall we do with this bill? As a result of the cutbacks in the EPF and the fact that we will reach the end of the 10-year period soon, when the clawbacks will not cease but will be 100 per cent, we should have a new formula. I believe that the Senate has a role to play in this matter.

What is the role of the Senate? The Senate was created as the house of sober second thought. There are many jokes about that phrase, but that is precisely one of the main reasons that this house was created.

The other reason was provided by the Fathers of Confederation, especially Joseph Howe, a Nova Scotian who was capable of great foresight. He knew that a time would come when Central Canada would grow and become wealthy, trampling Atlantic Canada in the process. That is why he was an anti-confederate in the 1860s. Joseph Howe was in Boston once, where he spoke to a group of Nova Scotians that were living there. He said to his fellow countrymen from Nova Scotia that they should brag about their province. He said that, whenever a Texan was in their midst talking about how big things are in Texas, they should ask about how high the tides are in Texas, because we have the highest tides in the world.

We must begin to think about the glories of places such as P.E.I., Newfoundland, Nova Scotia and New Brunswick, and the fact that the Fathers of Confederation created the Senate to protect the extremities of our country from big, bold, wealthy Ontario, Quebec and, now, Alberta.

The Senate has that role. If we could return to those basic two roles — the house of sober second thought that is here to protect, as needed, regions of Canada — then we would certainly be following the mandate that our Fathers of Confederation provided in 1867.

Honourable senators, we should remove the cap from a bill such as this. It is a simple bill, and we could do more than simply remove the cap. We could, as senators, deal with this bill by having an in-depth, comprehensive study on equalization. That is what the Senate is all about, or it should be all about. This bill should be referred possibly to Senator Murray's committee, so that they could prepare such an in-depth study.

Leave the cap off the bill for a period of time, which the provinces would like to see. Do not replace the cap but, rather, leave it off and put the bill in abeyance for a period of time. In that way, a Senate committee could prepare an in-depth study.

Honourable senators, it is fine to remove the cap for one year. However, it should be permanently removed for the next number of years. As far as I am concerned, this would help, over the next number of years, to narrow the disparity — the gap — that exists between our provinces. In that way, we would ensure that we are following the mandate of the Senate.

**Hon. Pat Carney:** Would the honourable senator accept a question?

**Senator Buchanan:** Absolutely.

[Translation]

**Senator Robichaud:** Honourable senators, when leave was granted to Senator Buchanan to conclude his speech, that did not mean that a question period would then follow. This might prevent other senators from speaking to other bills, if they so wish.

All that the senator was granted leave to do was to conclude his speech within a reasonable period of time.

[English]

**Senator Carney:** On a point of order, there have been other examples in this house, of permission being given to speak beyond the allotted time. It has been made clear that that permission, under the present *Rules of the Senate*, is unconditional. That would mean that I could ask my question of Senator Buchanan.

**The Hon. the Speaker pro tempore:** Honourable senators, I was not in the chair when that occurred. Therefore, I will give Senator Carney leave to ask questions of Senator Buchanan, if that permission was unlimited.

[Translation]

**Senator Robichaud:** Honourable senators, I have an objection to make. Both sides of this chamber had agreed that we would allow honourable senators to speak longer, up to a reasonable period of time, but not further. I have no problem with the fact that Senator Buchanan exceeded this limit, but the consent was not to the effect that this time limit could be extended to include a period of questions. We had already agreed on that.

[English]

• (1500)

**Senator Carney:** Honourable senators, my question to Senator Buchanan deals with this question of disparity.

**Senator Robichaud:** Honourable senators —

**The Hon. the Speaker *pro tempore*:** The question is: What is a reasonable period of time? The leave granted was for a “reasonable” amount of time.

[Translation]

**Senator Robichaud:** Honourable senators, leave was granted to allow Senator Buchanan to conclude his speech. I did specify that we should not get into an endless period of questions afterwards. My intention was to give some time to Senator Buchanan to conclude his remarks.

[English]

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, if I recall Senator Robichaud’s indication it was that he would allow Senator Buchanan to go over the 15 minutes, but for a reasonable period of time. I am trying to recall whether he said after that that it would be the end of the debate. I do not know that that was his intent, but I do not think it was as explicit as it should have been. Perhaps we could allow Senator Carney to ask her question and bring the debate to an end after she is through.

The next time the honourable senator wants to give conditional leave, let us understand that it will be for not more than five minutes, questions and speech included, rather than leaving it vague as we did today.

[Translation]

**Senator Robichaud:** Honourable senators, I get along very well with the Leader of the Opposition, who always does his best to make sure that things move along quickly. I agree with his suggestion to allow Senator Carney to ask a question to Senator Buchanan and to also allow him to reply.

**The Hon. the Speaker *pro tempore*:** Honourable senators, as you know, extending the time given to a senator is an issue that is being examined by the Standing Committee on Privileges, Standing Rules and Orders. The committee is discussing what a reasonable period of time should be.

Honourable senators, today I will allow the honourable senator to ask a single question and to get an answer.

[English]

**Senator Carney:** Thank you.

For the record, yesterday, Senator Bryden spoke longer than his time and was allowed questions. There needs to be consistency here.

My question deals with representations —

[Translation]

**Senator Robichaud:** Honourable senators, I wish to point out that Senator Bryden did not get leave of the Senate to continue his remarks. I would like to set the record straight. Senator Bryden spoke after a question was put to Senator Banks.

[English]

**Senator Carney:** Senator Buchanan spoke eloquently about the concept of equalization, saying that it was equalizing the disparity between public services being offered to provinces based on standards set by the middle provinces. The honourable senator made that the basis of his argument, saying that extra revenues should be taken into account.

I wish to point out the disparity of representation in the Senate between the two Western provinces who pay into the pot, Alberta and B.C., which together have a total of 12 senators, and the Maritime provinces which have 30 senators. That is a disparity of representation. If a Senate committee is to deal with this issue of equalization, how can the Senate deal with the issue that the representation on that committee will be totally biased in favour of the have-not provinces and against the have provinces?

**Senator Buchanan:** Honourable senators, I have a simple answer to the honourable senator’s question. I am very fair about this situation. In 1990, over at the conference centre, Premier David Peterson said, “Let us be fair in this country. We will give up some of our Senate seats in Ontario to the West, if John Buchanan and Frank McKenna will do the same.” I said, “I certainly will agree to give up one of our seats in Nova Scotia, if Frank McKenna agrees to do the same thing.” It is a good thing it did not go through. If it had, I would not be here today.

On motion of Senator DeWare, for Senator Kinsella, debate adjourned.

[Translation]

## INCOME TAX AMENDMENTS BILL, 2000

### SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Banks, seconded by the Honourable Senator Wiebe, for the second reading of Bill C-22, to amend the Income Tax Act, the Income Tax Application Rules, certain Acts related to the Income Tax Act, the Canada Pension Plan, the Customs Act, the Excise Tax Act, the Modernization of Benefits and Obligations Act and another Act related to the Excise Tax Act.



**Hon. Roch Bolduc:** Honourable senators, Bill C-22 amends the Income Tax Act in order to enact as law the decisions taken by the government in its February 2000 budget and its October 2000 economic statement and update.

We had two budgets in the year 2000. The winter budget was to announce tax cuts which seemed sizeable, because the minister focussed on the results after five years, but were in fact minimal for the current year, so minimal in fact that his buddies in the Toronto business community tore a strip off him and informed him that his February decisions were not realistic, not in the least, for North America in the year 2000.

Honourable senators, the minister feigned surprise. I think he was well aware that his actions were not bold enough. So aware that, after a summer of reflection and the Prime Minister's strategy of going to the people in the fall, the real 2000 budget came out in October to correct the faulty aim of the previous spring.

In governmental parlance, this is called a budget update. In reality, since the minister's key decisions could be implemented from January 2001 on, we had a second year-2000 budget, with the result being that we are very unlikely to have one in the year 2001. The government will run on autopilot all year.

I do not know whether many Western democracies bring down two budgets in an election year and none the year following. Unless the minister after giving some thought over the coming summer decides in the fall to bring down a new one. I will not describe all the tax provisions in this bill, which Senator Banks presented to us some ten days ago.

I would, however, like to point out one general feature of it: the discriminatory nature of all the measures. Under the guise of tax equity, the government is here and there changing tax tables, credits, exemptions and deductions as if to shape a true mosaic of the tax efforts of each individual according to his or her ability to pay.

No end of distinctions are being made here and there in the case of people and business. The search is for an ever more perfect equity, except that the criteria for evaluating perfect equity vary with the taxpayer. I would be tempted to paraphrase: Oh equity, what injustice is committed in thy name!

Look at this bill in my hand. It contains 500 pages requiring 650 pages of explanations and a two-inch-thick ring binder to explain it all to us. This is the symbol of a tax system that discriminates *ad infinitum*.

There is always a good excuse: number of children, physical state, current studies, workers' mobility, type of work, type of immigrant, the sort of business — high tech or traditional

business — sales figures, investment type, type of trust and so on.

• (1510)

We might say that, somewhere in the Department of Finance, they have an artist's sketch of the perfect taxpayer, individual or business, and are trying to transpose it into the tax system, when everyone knows that, in order to administer the range of government programs, often themselves the result of different pressures brought to bear by the ministers, the government needs revenues, which it will take out of taxpayers pockets according to various formulae that are also the product of the various pressures brought to bear on it, especially from the most mobile voters.

Another example, honourable senators, of the tax process I want to bring to your attention is the fact that we are currently examining decisions made probably in December 1999 or January 2000, that is, some 18 months ago, and many binding decisions made since February 2000, that is, 15 months ago. It seems to me that there is a major hitch in the parliamentary process. The representatives of the people, other than the government, should be invited to vote on tax laws as quickly as possible after the budget. I appeal here to the Leader of the Government in the House of Commons to improve sessional proceedings.

We have now reached the point where tax laws are no longer important, and this is unacceptable. They are the most important laws because, as you know, taxes are a kind of organized robbery. The government can take our money. This is serious. These laws should get priority. Of course, we respect the secrecy required until the minister delivers his budget speech. However, the government should not wait six months to introduce the related bills.

Finally, the Minister of Finance, a fellow who always has a smile on his face, who is a smooth talker and a man of great humour, behaves like a Bay Street baron in our British type of Parliament.

His discretionary powers are such that one must almost be reckless to accept a job with such responsibilities: He makes the decisions about taxes, he announces binding decisions for a specific date, he manages the national debt and the borrowings without any interference on the part of the elected members of Parliament, he deals with international financial institutions such as the International Monetary Fund and the World Bank without members of Parliament having any say in the process, he forgives the debt of poor countries with a stroke of a pen, he signs international agreements that commit our country, he administers pensions without an annual review by the two Houses of Parliament, he pays salary increases resulting from collective agreements in the public service this without the involvement of parliamentarians, and so on.



If we add to this the ministerial discretion regarding foreign relations and treaties, I can only conclude that, except for the legislation, parliamentarians impact on barely 20 per cent of the budget, at most.

It is always said to be 30 per cent, but in fact salaries account for a significant part. In the end, the discretion that we have to examine government spending covers between 15 per cent and 20 per cent.

It seems to me that this oligarchic form of management of our parliamentary system requires an in-depth reform to somewhat adjust the balance of power. There is an undue concentration at the level of the executive branch, and this could lead to terrible abuse. I call on you, honourable senators, to see if we could change the situation through a reform of the Senate, among other initiatives, to counterbalance the heavy centralizing tendency that affects our whole system.

[English]

**The Hon the Speaker *pro tempore*:** I wish to inform the Senate that if the Honourable Senator Banks speaks now, his speech will have the effect of closing debate on the motion for second reading of this bill.

**Hon. Tommy Banks:** Honourable senators, I am sure all honourable senators concur that we ought to do everything that we can to ensure that Parliament's responsibilities are properly carried out, with alacrity.

I also concur with the remark that this bill is discriminatory. In the view of government, I think it is fair to say that it is discriminatory in that it makes the largest tax cuts among those Canadians who need those largest tax cuts the most, a discrimination with which I am sure the honourable senator would agree.

However, in order that it be properly studied — and I hope it will be done with alacrity in order that we can make the payments which Canada's families and children will be due when this bill is passed — and I do hope we deal with it in jig time — I move that the bill be read the second time and referred to the Standing Senate Committee on Banking, Trade and Commerce.

**The Hon the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Banks, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.

[Translation]

## BUDGET IMPLEMENTATION ACT, 1997 FINANCIAL ADMINISTRATION ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Morin, seconded by the Honourable Senator Gill, for the second reading of Bill C-17, An Act to amend the Budget Implementation Act, 1997 and the Financial Administration Act.

**Hon. Roch Bolduc:** Honourable senators, Bill C-17 amends the Budget Implementation Act, 1997 and the Financial Administration Act.

I wish to congratulate the newly arrived Senator Morin on his speech on the importance of research to the Canada of the future and on the government's efforts in this regard. I see that he has enthusiastically supported the government's points of view. Perhaps he even helped to shape them. That would not be new.

Why revisit the Budget Implementation Act, 1997? Because it was in that year's budget that the Minister of Finance announced the creation of the Canada Foundation for Innovation and funding of \$800 million to that body for the purpose of modernizing and expanding our country's research infrastructure. Since the government decided in October 2000 and February 2001 to increase the funding available to the foundation by one and a quarter billion dollars, the Budget Implementation Act, 1997, had to be amended accordingly.

You will recall, honourable senators, that, at the time, Mr. Martin had included all the funding for this foundation, which did not yet legally exist, in the 1996-97 accounts.

Not only was this an accounting practice the Auditor General strongly and quite rightly denounced, but parliamentarians, at least those in the opposition, harshly criticized the government for failing to respect the rules that govern our democracy. It seemed to us that an agency established by legislation should first be created by the chambers before the government allocated public funding to it.

I must say that, since this oversight by the Minister of Finance, he has been more respectful of something as elementary as sound parliamentary practice.

We on this side of the chamber have no objections to more funding for the Foundation or to the additional money for the Arts Council and other granting bodies.

We must be aware, however, that ministerial accountability is again taking a beating. I note with regret that an administrative regime is gradually being implemented in Canada that makes it harder and harder for simple representatives of the people, MPs and senators, to carefully monitor the administration of public funds, although this should be their primary role.

Governments, and I say governments by design because there has been a trend for several decades now in both Ottawa and the provinces, have invented a whole range of administrative instruments over and above the departments to operate governmental programs and public services. If it is not Crown corporations or agencies, it is special agencies or relatively independent offices or administrative commissions with their own powers of administration and regulation or semi-judiciary powers.

So much is this so, that it has become extremely difficult for the lay person, let alone the average parliamentarian, to get behind all these overlapping administrations and get a clear picture of how legislation is being enforced or funds allocated, or a clear picture of the possible discretionary abuses.

It could almost be said that our legislation is intended to confuse people, to give ministers the joy of saying yes, and to hand over to the administrative process the responsibility for administering billions of dollars in accordance with criteria that are more or less unknown to the public, with the exception of lobby groups and the administrators who deal with them. This alters people's behaviour. For example, certain academics have become specialists in the preparation of funding applications, taking away from the very precious time they have available to them. I observe these practices with regret, since they tend to erode our principles of frugality with the public purse.

Fortunately, honourable senators, the second aspect of the bill we are addressing stipulates that Parliament must in future expressly authorize any borrowing by the State. It is the responsibility of the Minister of Finance to authorize the operations, because it appears that DND, among other departments, may have bypassed this requirement in the past. I therefore feel that it is right for there to be tighter control on the level of indebtedness, and who better to have that control than the Minister of Finance?

• (1520)

Finally, honourable senators, the Canada Pension Plan Investment Board is again, like other Crown corporations, exempt from the application of Part X of the Financial Administration Act. This is the correction of a technical error in a 1998 law.

Along the lines of what I was saying earlier, I remind you that this Board invests the contributions of public sector contributors, a little like the Caisse de dépôt in Quebec. You will recall that, when the Minister of Finance appeared before our committee of

the whole, a few years back, we asked the government some serious questions on this new institution, which may exercise in Canada discretionary economic powers more considerable than those of the ministers of the Crown. In the past three years, we have heard a lot of talk of this future monster, which I had asked the minister to break down into a number of units so the relative performance of this group of investors could be measured. Unfortunately, the minister ignored our appeal. We will, soon, I hope, have the opportunity to consider the Board's activities.

In conclusion, in the same bill, the government is introducing agencies not reporting directly to a minister in the distribution of public funds. In this regard, it is headed toward a sort of increased margin of discretion for administrative agencies. In the second part of the bill, the government tightens its controls over the whole bureaucracy and exempts another board so that we end up with a bill containing three principles. There is no common thread on the subject of the government's accountability, on the contrary, there are three different principles.

On motion of Senator Morin, bill read a second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker:** When shall this bill be read the third time?

On motion of Senator Morin, bill referred to the Standing Senate Committee on National Finance.

[English]

## CUSTOMS ACT

BILL TO AMEND—REPORT OF COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the fifth report of the Standing Senate Committee on National Finance (Bill S-23, to amend the Customs Act and to make related amendments to other Acts, with amendments) presented in the Senate on May 17, 2001.

**Hon. Tommy Banks:** Honourable senators, in the unavoidable absence of the chair of the committee and of the deputy chair, and as the third member of the steering committee, I take pleasure in moving the adoption of this report.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. W. David Angus:** Honourable senators, the government has declared that this bill represents a bold and innovative step forward in its plan to modernize the processing of goods and people crossing Canada's borders and to promote Canadian competitiveness and prosperity in the world marketplace by streamlining the movement of legitimate trade and travel.



Whilst I believe that the government has lapsed into hyperbole once again in describing the benefits likely to result directly from this bill, and although even these benefits will not be realized for years, I acknowledge that Bill S-23 is, by and large, a good bill with important potential for Canada. It represents a sound development in implementing our nation's forward-looking customs action plan.

Honourable senators, you may recall from my speech at second reading on May 3 that I highlighted a number of areas of concern with this bill. All these points were addressed when the bill was before the National Finance Committee, and I am happy to report that the majority of my concerns have been resolved. My colleagues and I, together with our staff, will continue working to resolve those matters still outstanding, but we are now comfortable that the bill and the forthcoming regulations relating to it, which are due to be enacted concerning its principal measures, have been sufficiently dealt with.

Although Bill S-23 did receive a reasonably thorough analysis and review at committee, honourable senators, there was not sufficient time to hear from all the interested parties who have become sensitized as a result of our interventions to some of the far-reaching consequences of the legislation and its potential implications through regulations.

The National Finance Committee heard from several key stakeholders, but other groups, including the sales and commodity tax section of the Canadian Bar Association and the Canadian Courier Association were, for one reason or another, unable to attend the hearings.

While I believe that the Senate has done justice to the bill in large measure, I take some comfort in knowing that these groups and others will have the time to prepare presentations to be made in committee in the other place. I am grateful to the chair of the National Finance Committee, our honourable colleague Senator Murray, for reading into the record correspondence from one of these groups but, frankly, honourable senators, I feel that their physical presence before a parliamentary committee, where a more thorough explanation of their issues could take place, would have better served the public interest. That is why I have had my staff assist these groups *inter alia* to be in touch with the appropriate committees in the other place.

Honourable senators, last week it became apparent that the impatient Liberal majority on the Senate Finance Committee was not prepared to extend the time for consideration of the bill so as to hear from additional witnesses or to agree, at least, to the annexing of a statement of observations and recommendations to the committee report. That was unfortunate but not the end of the world since, as I say, the bill must still be considered in the other place, including study there at committee stage.

For the record, though, I should like to indicate the general tenor of the statement of observations and recommendations my colleagues and I on this side have in mind. First, testimony both from industry witnesses and from officials of the Canada Customs and Revenue Agency, the CCRA, made it apparent that Bill S-23 has outstanding potential. However, they also indicated that the regulations required to implement these initiatives, and particularly the administrative monetary penalty system, AMPS, and the Customs Self-Assessment System, or the CSA program, will in actual fact contain most of substance of the measures intended to be brought in by the bill.

As such, short of seeing the regulations themselves, we would have liked the committee to formally recommend that the government table the regulations in draft form before both Houses of Parliament and refer them to the appropriate committees for review and study before enactment. As I and numerous other honourable senators have said from time to time recently, we are concerned that we are moving farther and farther down the road to rule by regulation. We do not know, when we pass the enabling legislation, what the regulations will say and how far they will go. I note that the minister and the senior officials from the CCRA assured the committee that the regulations pursuant to Bill S-23 will receive ample informal review and pre-study by all interested stakeholders.

Honourable senators, I submit that every effort should be made to ensure that that review in fact happens. The officials from the agency have confirmed that only a relatively minor percentage of the goods imported into Canada by importers will be eligible for the CSA program at its inception. Given that this program has been touted as the foremost initiative of Bill S-23 and our volumes of trade are increasing significantly, we would have welcomed the specific recommendation by the committee to the effect that the agency continue to work closely with other involved government departments to ensure that the CSA program applies immediately to as many of the specifically regulated goods over which this department does not have jurisdiction, especially food and pharmaceutical products.

• (1530)

As well, given the grave concerns raised by the Privacy Commissioner as a result of reported incidents of mail being opened by customs officers, we also would have liked the committee to specifically recommend to the government, particularly the Ministers of Immigration and National Revenue, that they reconsider the recommendation of the Privacy Commissioner to refer mail that does not contain solid objects to the Department of Citizenship and Immigration Canada unopened. The CIC could then obtain warrants to open this mail if it had reasonable grounds. Since the great majority of envelopes detained for CIC do contain solid objects, this should not impose an undue administrative burden on the resources of the CIC.



Honourable senators, at second reading, I said that these concerns should be studied and that a balance should be struck between the state's need to control the possible flow of illicit items across our borders and the rights of Canadian citizens to a reasonable degree of privacy, to which they are assured under our Constitution.

The committee heard from representatives of the Canadian Bar Association — and I find this important to note — that in their opinion certain provisions of Bill S-23 are unconstitutional, being in direct violation of the Charter of Rights and Freedoms. I understand that Senator Murray will make specific reference to this particular concern next Tuesday, as the debate on third reading continues.

I would simply add that given current global phenomena, such as money laundering, illegal drug activity, the outbreak of foot and mouth disease, and the increase in human smuggling in illegal immigration, I believe more debate on these privacy issues is needed before we can definitively state that a reasonable balance has been struck.

Honourable senators, I believe it is reasonable that we should take at face value the assurances from Minister Cauchon and the officials from the CCRA that our export and import industries, and all the interested players, will receive fair and just treatment in the application of the measures under the proposed customs or monetary penalties under the AMPS program. However, I submit that we, as senators, should all be careful and vigilant to ensure that the new rules and regulations, when enacted, will in actual fact enhance, rather than inhibit, Canada's trade, as intended by the bill.

Honourable senators, those are my comments for the record in connection with this bill and in regard to the report.

On motion of Senator DeWare, for Senator Murray, debate adjourned.

[Translation]

## BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, on Wednesday, we try to conclude the business of the Senate as close to 3:30 p.m. as possible to permit the committees to sit. I ask that all items on the Order Paper and Notice Paper that have not been reached stand in their place.

[English]

## IMPERIAL LIFE ASSURANCE COMPANY OF CANADA CERTAS DIRECT INSURANCE COMPANY

PRIVATE BILLS—MOTION TO SUSPEND RULE 115 ADOPTED

Leave having been given to revert to Notices of Motions:

**Hon. Lorna Milne:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That rule 115 be suspended with respect to Bill S-27, An Act to authorize The Imperial Life Assurance Company of Canada to apply to be continued as a company under the laws of the Province of Quebec, and Bill S-28, An Act to authorize Certas Direct Insurance Company to apply to be continued as a company under the laws Province of Quebec.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until Thursday, May 31, 2001, at 1:30 p.m.

## APPENDIX

## P.C. 2001-569

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by Her Excellency the Governor General on the 3<sup>rd</sup> of April 2001

Whereas achieving and maintaining good health and ensuring universal access to quality health services is a matter of concern to all Canadians;

Whereas in September, 2000, all First Ministers on behalf of Canadians affirmed their support for a common vision for health and for the five principles embodied in the *Canada Health Act*;

Whereas all First Ministers, in addition to agreeing on specific measures, committed themselves and their governments to a partnership to strengthen and renew health services for Canadians;

And whereas the strong attachment of Canadians to a health system that meets the needs of all Canadians and the commitment of governments to work together constitute the foundation for a public dialogue on the long-term sustainability of Canada's publicly funded health care system;

Therefore, the Committee of the Privy Council, on the recommendation of the Prime Minister,

- (a) advise that a Commission do issue under Part I of the *Inquiries Act* and under the Great Seal of Canada appointing Mr. Roy J. Romanow, Q.C., as Commissioner to inquire into and undertake dialogue with Canadians on the future of Canada's public health care system, and to recommend policies and measures respectful of the jurisdictions and powers in Canada required to ensure over the long term the sustainability of a universally accessible, publicly funded health system, that offers quality services to Canadians and strikes an appropriate balance between investments in prevention and health maintenance and those directed to care and treatment;
- (b) direct that the Commissioner be authorized to conduct the work of the inquiry in two stages, the first focusing on fact-finding resulting in an interim report and the second emphasizing dialogue with the Canadian public and interested stakeholders based on the interim report;
- (c) direct that the Commissioner submit an interim report (based on the work conducted in stage one), in both official languages, to the Governor in Council in approximately nine months, and a final report (based on the interim report and the work conducted in stage two) with recommendations, in both official languages, to the Governor in Council on or about November, 2002; and
- (d) advise that the Commissioner
  - (i) be authorized to appoint advisers and create advisory mechanisms as he deems appropriate for the purpose of the inquiry,
  - (ii) be authorized to consult with provinces and territories and groups and individuals having an interest in or responsibility for health care in Canada and to use the means and vehicles required to ensure that a dialogue with Canadians occurs during the course of the inquiry,
  - (iii) be authorized to adopt such procedures and methods as he may consider expedient for the proper conduct of the inquiry, and to sit at such times and in such places in Canada as he may decide,
  - (iv) be authorized to rent such space and facilities as may be required for the purposes of the inquiry, in accordance with Treasury Board policies,
  - (v) be authorized to engage the services of experts and other persons as are referred to in section 11 of the *Inquiries Act*, at such rates of remuneration and reimbursement as may be approved by the Treasury Board,
  - (vi) be directed, in making his interim and final reports, to consider and take all necessary steps to protect classified information, and
  - (vii) be directed to file the papers and records of the inquiry with the Clerk of the Privy Council as soon as is reasonably possible after the conclusion of the inquiry.





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CANADA

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OFFICIAL REPORT  
(HANSARD)

Thursday, May 31, 2001

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THE HONOURABLE DAN HAYS  
SPEAKER



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## THE SENATE

Thursday, May 31, 2001

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### OFFICIAL OPENING OF ICELAND EMBASSY

**Hon. Janis G. Johnson:** Honourable senators, last week, on May 22, the official opening of the first Icelandic embassy in Canada took place in Ottawa.

Icelandic Foreign Minister, Halldor Asgrimsson, and Canada's Minister of Foreign Affairs, the Honourable John Manley, did the honours and cut the ribbon at the new offices on Albert Street. A reception followed at the ambassador's residence, hosted by Ambassador Hjalmar Hannesson and his wife, Anna Birgis. Ambassador Hannesson presented his credentials in April to the Governor General and became Iceland's first ambassador to Canada at that time.

It was a great honour to have Foreign Minister Asgrimsson present for the occasion, representing Iceland, and Prime Minister David Oddsson. They have worked toward this goal for the past few years. It was achieved during the Canada-Iceland Millennium Celebrations that were held last year and commemorated the 1000th anniversary of the discovery of North America by the Vikings. It was during Prime Minister Oddsson's visit last April that he announced Iceland's intention to open an embassy here. Prime Minister Chrétien responded positively that Canada would do the same in Iceland.

The formal announcement was made by former Foreign Affairs Minister Lloyd Axworthy in August at the annual Islendingadagurinn celebration in Gimli, Manitoba. Canada's first embassy in Iceland will open in the fall.

Honourable senators, Canada-Iceland relations are further strengthened by this initiative. Iceland is an active member of NATO and the United Nations and has worked with Canada for years on issues affecting the northern regions, in particular with the Arctic Council and the Nordic Council.

Last June, our government announced a new northern initiative entitled "The Northern Dimension of Canada's Foreign Policy," a commitment to expanding our work on issues affecting our northern and Arctic regions and enlarging circumpolar partnerships, especially with the United States, Russia, the Baltic states, Finland, Norway, Denmark, Sweden and Iceland. These initiatives include the fisheries, environment, energy, research

and development, transportation, communication and Aboriginal peoples.

Iceland is already involved in many projects in Atlantic Canada in the fisheries and tourism areas and operates three flights a week out of Halifax to Iceland and Europe.

Canadians of Icelandic origin are extremely pleased with this exchange of ambassadors. I know it will benefit both countries. Canada will have no finer or more loyal a friend than Iceland, as the people who settled here from Iceland have proven over the last 120 years in Manitoba and across this land.

Honourable senators, I hope you will visit the new embassy and also take a trip to Iceland if you want to see a truly wonderful and unique country.

### ROUTINE PROCEEDINGS

#### FINANCIAL CONSUMER AGENCY OF CANADA BILL

##### REPORT OF COMMITTEE

**Hon. E. Leo Kolber,** Chairman of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Thursday, May 31, 2001

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

##### SIXTH REPORT

Your Committee, to which was referred Bill C-8, An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions, has, in obedience to the Order of Reference of Wednesday, April 25, 2001, examined the said Bill and now reports the same without amendment, but with observations and a letter, which are appended to this report.

Respectfully submitted,

LEO KOLBER  
Chairman

(For text of Appendices, see today's Journals of the Senate, p. 626.)

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Carstairs, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

[Translation]

## OFFICIAL LANGUAGES

### THIRD REPORT OF JOINT COMMITTEE TABLED

**Hon. Jean-Claude Rivest:** Honourable senators, on behalf of the Honourable Shirley Maheu, Joint Chair of the Standing Joint Committee on Official Languages, I have the honour to table the third report of the Standing Joint Committee on Official Languages concerning the budgetary appropriations of the Office of the Commissioner of Official Languages.

### FOURTH REPORT OF JOINT COMMITTEE TABLED

**Hon. Jean-Claude Rivest:** Honourable senators, on behalf of the Honourable Shirley Maheu, Joint Chair of the Standing Joint Committee on Official Languages, I have the honour to table the fourth report of the Standing Joint Committee on Official Languages concerning a resolution expressing the committee's wish that the government consider the advisability of increasing funding for the Office of the Commissioner of Official Languages.

• (1340)

[English]

## IMPERIAL LIFE ASSURANCE COMPANY OF CANADA

### PRIVATE BILL—REPORT OF COMMITTEE

**Hon. Lorna Milne,** Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, May 31, 2001

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

### SIXTH REPORT

Your Committee, to which was referred Bill S-27, An Act to authorize The Imperial Life Assurance Company of Canada to apply to be continued as a company under the laws of the Province of Quebec, has, in obedience to the Order of Reference of May 29, 2001, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

LORNA MILNE  
*Chair*

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Joyal, with leave of the Senate and notwithstanding rule 58(1)(g), bill placed on the Orders of the Day for consideration later this day.

## CERTAS DIRECT ASSURANCE COMPANY

### PRIVATE BILL—REPORT OF COMMITTEE

**Hon. Lorna Milne,** Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, May 31, 2001

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

### SEVENTH REPORT

Your Committee, to which was referred Bill S-28, An Act to authorize Certas Direct Insurance Company to apply to be continued as a company under the laws of the Province of Quebec, has, in obedience to the Order of Reference of May 29, 2001, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

LORNA MILNE  
*Chair*

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Joyal, with leave of the Senate and notwithstanding rule 58(1)(g), bill placed on the Orders of the Day for consideration at later this day.

[Translation]

## MISCELLANEOUS STATUTE LAW AMENDMENT PROPOSALS

### NOTICE OF MOTION TO REFER TO COMMITTEE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I give notice that Tuesday next, June 5, 2001, I will move:

That the document entitled "Proposals to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal an Act and certain provisions that have expired, lapsed or otherwise ceased to have effect", tabled in the Senate on May 30, 2001, be referred to the Standing Senate Committee on Legal and Constitutional Affairs.



## L'ASSEMBLÉE PARLEMENTAIRE DE LA FRANCOPHONIE

CANADIAN DELEGATION TO MEETING OF APRIL 2-3, 2001—  
REPORT TABLED

**Hon. Rose-Marie Losier-Cool:** Honourable senators, pursuant to rule 23(6), I have the honour to table in this house, in both official languages, the report by the Canadian branch of the Assemblée parlementaire de la Francophonie, and the accompanying financial report. The report concerns the meeting of the Committee on Education, Communication and Cultural Affairs held in Phnom Penh, Cambodia, on April 2 and 3, 2001.

[English]

### BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, I wish to draw your attention to Inquiry No. 21 on our *Order Paper and Notice Paper*. The notice of inquiry of Senator Gauthier, as presented to the house yesterday, provided for a one-day notice. The notice required is two days. After discussions with the Table and Senator Gauthier, I have indicated on the *Order Paper and Notice Paper* that the matter will be dealt with after the required passage of two days. I simply give notice to honourable senators that this change has been made with the agreement of Senator Gauthier.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I would prefer that the matter be resolved not pursuant to rule 65, as a correction from the Speaker, but rather that there be unanimous consent of the house that the record of yesterday be changed to read two days rather than one day.

**The Hon. the Speaker:** It has been proposed by Senator Kinsella that a better approach would be to proceed as he has suggested. I have no objection.

Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

## QUESTION PERIOD

### NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS—RISK ANALYSIS PRIOR  
TO SPLITTING PROCUREMENT PROCESS—  
DENIAL OF REQUEST FOR COPY

**Hon. J. Michael Forrestall:** Honourable senators, I have a question for the Leader of the Government in the Senate. Let me

say in parentheses that I have been very much aware of the existence of the memorandum that was the subject of widespread coverage in newspapers today. Can the minister tell this chamber why, when I requested this document under an Access to Information request some time ago, I was told that no such document existed? Indeed, in the question and answer section of the Maritime Helicopter Project Website, questions 2000-29 and 2000-87 state that no risk analysis, discussion papers or standard operating procedures existed for this procurement. Why was I denied this information?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not know why the honourable senator was denied that information, but I will try to find out.

REPLACEMENT OF SEA KING HELICOPTERS—CHANGES TO BASIC  
VEHICLE REQUIREMENTS

**Hon. J. Michael Forrestall:** That answer is the type we should have been getting for the last three or four years. We might have made some honourable progress.

Could the minister explain why she has told the chamber repeatedly that the government is trying to save taxpayers' money with this procurement when, indeed, it is spending more than 400 million additional, unnecessary dollars for a split procurement procedure?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I have been consistently saying all along that the government wants the best possible price, but it also wants — and this is an even more important concept — the best vehicle for the Armed Forces.

• (1350)

They believe that they can do that at a better price than the original determination made by the previous government in 1993.

**Senator Forrestall:** Honourable senators, that is a helicopter that you cannot pull the rotary blades on. I fail to follow the logic of the minister's response.

Can the minister explain why the military was told that they would have to settle for second best when, in fact, it was well known, in very narrow circles, I must admit, that an additional \$400-million unnecessary cost was being added?

**Senator Carstairs:** Honourable senators, the honourable senator indicated that the military has been told that they had to settle for second best. I do not know who told the military that. The government has been very clear in what its position has been, that is, that the military should come up with the analysis, the military should determine what it is that they require, and once that is determined, the specifications will be issued. That is what occurred.

**Senator Forrestall:** Why is the government wasting \$400 million to exclude the EH-101 and Sikorsky from the maritime helicopter prototype? Why is this happening? It is what is happening.

**Senator Carstairs:** The honourable senator certainly believes that is what has happened. No company has been excluded from this bidding process.

## FOREIGN AFFAIRS

### SAUDI ARABIA—STATUS OF CANADIAN PRISONER— REQUEST FOR UPDATE

**Hon. Marcel Prud'homme:** Honourable senators, I have a very serious question to ask of the Leader of the Government in the Senate.

Could she give us an update as to the sad turn of events taking place between Canada and Saudi Arabia concerning "a prisoner," guilty or not. We follow the British rule so he is not guilty until proven otherwise. Could she first give me an update, which I will follow with a supplementary question?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, what we know at this moment — and I am assuming he is making reference to the Sampson case and the situation in Saudi Arabia — is that our ambassador visited Mr. Sampson on Tuesday in the company of a doctor of the Canadian embassy's choosing. The individual was given a full external medical examination and the ambassador was able to question him concerning his specific injuries. Honourable senators will appreciate we do not want to talk about the details of those injuries in order to preserve Mr. Sampson's privacy. However, the preliminary assessment of the doctor is that his injuries do not indicate that he was tortured. It is the position of the government that they will continue to monitor this case closely. There have been some suggestions that the ambassador should be recalled. The Prime Minister is very clear in this matter. He thinks the best protection for Mr. Sampson can be provided if our ambassador remains there.

I can give the honourable senator an update on the visit of the Saudi Crown Prince because I think it is all tied together in this very difficult file. The Crown Prince informed the Department of Foreign Affairs that he will not be coming to Canada next month, but he hopes to do so at a later date.

**Senator Prud'homme:** I am pleased that our Prime Minister kept a cool head on this issue in front of the highly demagogic attack by the Official Opposition in the other place, led by Mr. Solberg. It does not help Canada's relationship with that country. Indeed, the Crown Prince has cancelled his visit and it is related to that matter. Many people do not understand that there are many differences in the Middle East, and I hope we will have a full debate someday. When people feel that they are treated as they were in the press in Canada, their sensitivity is attacked.

May I say to the minister that some of us under the leadership of the late Senator Molgat went to Saudi Arabia —

**Senator Tkachuk:** Question.

**Senator Prud'homme:** I am trying to be shorter than Senator Forrestall.

Who is asking me to put my question?

**Senator Tkachuk:** I am.

**Senator Prud'homme:** I will get to it.

Some of us went there, including our then Speaker, Gildas Molgat, and Senators Rompkey, Nolin, Lynch-Staunton, Milne and myself. We met with the King, which was quite unusual; we met with the Crown Prince, which was even more unusual. To meet both in the same day was totally unusual. We knew the Crown Prince was coming to open the embassy. Some honourable senators should know that everything has been done by some people in Canada to stop the opening of that embassy, to get their visa, and it is continuing. Today, there are 7,000 Canadians living happily and doing very well in Saudi Arabia. I hope that the minister refers this issue to the government. For reasons that are beyond my comprehension, there are people who seem not to like the good relationship developing between Canada and Saudi Arabia. It is true that the Crown Prince decided he was not going to the United States during his visit. That has nothing to do with his visit to Canada. I am a Canadian. This is turning out to be a very terrible, sad event in a series of events. Could the minister relay the feelings of at least some of us who went there and who understand the situation a bit better now? I hope those senators will join with me eventually in a representation. If need be that would be my question, that maybe some acceptable people could be sent there as representatives of the government.

We have done this kind of thing with Senator Wilson and others. Senator Roblin, Dr. Pauline Jewett and myself were sent to Russia at the worst time, and upon our arrival, because we were acceptable, we were received by Mr. Yakovlev. Things were normal after that, thanks to Senator Roblin, thanks to Dr. Pauline Jewett, and I would hope a little to myself.

If things are that sad, then perhaps something exceptional could be done.

May I conclude by saying how sad I am that when we went there, we were not even briefed that there was a Canadian in jail. That was in January, and Mr. Sampson had been in jail since December. Something must have been wrong somewhere. We were totally taken by surprise when we learned about the matter upon our return to Canada. We met with the Crown Prince and the King, and we could have raised the issue but we were not briefed on it.

**Senator Carstairs:** Senator Prud'homme has raised a number of important issues in the chamber this afternoon. I will share his concerns and his interests with my colleagues in the cabinet.



## NATIONAL DEFENCE

### REPLACEMENT OF SEA KING HELICOPTERS—CHANGES TO BASIC VEHICLE REQUIREMENTS

**Hon. David Tkachuk:** Honourable senators, my question is for the Leader of the Government in the Senate. In terms of search and rescue and naval boarding parties, our current Sea King is being fitted to accommodate seven passengers and four crew, for a total of 11 people. The basic vehicle requirement specification allows for two passengers, or, by stripping the guts out of the aircraft over a one-hour period, allows the proposed Maritime helicopter to change over to search and rescue and take on six passengers. Cabin space is obviously reduced. Will the minister tell us why this non-Cold War requirement for cabin space has been so drastically lowered from the Sea King to the Maritime helicopter?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I am certain that Senator Tkachuk understands why I cannot give him a specific answer for the number of passengers in a helicopter. However, it is an interesting question. I will try to obtain a response for him and will make an inquiry at my briefing on June 11.

**Senator Forrestall:** You seemed to know yesterday. Don't look sullenly at me like that, Madam Minister.

• (1400)

**Senator Tkachuk:** Is it not a fact that the Cougar has drastically less cabin space than the S-92 or the EH-101, so much so that it was a critical factor in the recent search and helicopter competition that, by the way, the Cougar lost? Is that not the reason that cabin space is being sacrificed in this program, just so the government can pick up the Eurocopter Cougar?

**Senator Carstairs:** No, honourable senators.

## BUSINESS OF THE SENATE

**Hon. David Tkachuk:** Honourable senators, I should like to ask a question of Her Honour. Is it the new precedent in Question Period that an honourable senator can make a five-minute speech? If it is, I would love to take advantage of it next time. What is the precedence? How long a speech can I make before I have to ask a question?

**The Hon. the Speaker *pro tempore*:** Are you raising a point of order, Senator Tkachuk? I do not understand exactly what you want to do.

## NATIONAL DEFENCE

### REPLACEMENT OF SEA KING HELICOPTERS—CHANGES TO BASIC VEHICLE REQUIREMENTS—EFFECT ON PARTICIPATION IN MULTILATERAL OPERATIONS

**Hon. Terry Stratton:** Honourable senators, this is one of the lobbyists speaking.

**Senator Rompkey:** Who are they? You should name them.

**Senator Stratton:** My question is for the Leader of the Government in the Senate. It is clear from the government's basic vehicle requirement specifications that its new maritime helicopter is not intended to operate in temperatures above 35 degrees Celsius. As the minister has said, how warm does it get on our coasts?

My concern is our international commitments. What if we want to cooperate with forces from other countries on naval deployments in the Pacific, in East Timor, in the Persian Gulf, in the Mediterranean or in Somalia? Has the government informed our allies in the international community that we will no longer be participating in multilateral operations outside our waters?

**Hon. Sharon Carstairs (Leader of the Government):** No, honourable senators, the government has not done that because the government has not made a decision on what the helicopter will be.

**Senator Stratton:** Honourable senators, I thought the minister said earlier that we do not have to worry about temperature because our coasts do not get too warm. Now we have a situation that needs to be clarified, please. Will the helicopter described in the specifications be capable of flying in temperatures above 35 degrees during missions in the locations I have described? The minister does not have to answer now, but I would appreciate an answer.

Honourable senators, the Sea King has been declared materially obsolete by the Department of National Defence, but it can fly in temperatures above 50 degrees Celsius. We are concerned that the government is considering buying a new helicopter that cannot fly effectively in those temperatures for over 2 hours and 20 minutes. In other words, its life expectancy on patrol is less than 2 hours and 20 minutes. Is that something that the government, according to its requirements, is willing to accept?

**Senator Carstairs:** Honourable senators, there is no specific requirement in the maritime helicopter project for a specific distance capability because, as has been pointed out often by Senator Forrestall, distance is affected by climactic operational and other conditions — not just climate but other conditions as well.

The requirement is for endurance. After extensive analysis DND determined that the new helicopters, in order to be considered, should be capable of remaining airborne for 2 hours and 50 minutes under normal conditions, with a 30-minute fuel reserve, or two hours and 20 minutes with a 30-minute fuel reserve under extreme heat conditions.



**Senator Stratton:** Honourable senators, are our allies satisfied with those requirements, not just our Department of National Defence? If we are going into trouble regions alongside our allies, they should be aware of our limited capabilities. Are they aware?

**Senator Carstairs:** Honourable senators, the helicopter has not been chosen. I am sure that when the helicopter is chosen, just as we share information with our allies about the state of equipment that we presently have, we will inform them as to the state of the equipment. However, we do not need permission from foreign countries to purchase equipment in this country.

**Hon. J. Michael Forrestall:** I should like to ask a supplementary question, honourable senators.

In all seriousness, I believe that each time the Leader of the Government in the Senate rises to her feet to respond to a question, she is telling us what she believes to be the truth. Some of us are just a little frustrated because we have in hand documents that prove otherwise. If these documents were mine or if I felt at liberty to table them, I would, but I do not feel at liberty to do so. I have them and the minister can get them. Why does she not obtain these documents and answer some of the questions?

She is smirking and laughing. Go to Shearwater and laugh at the wives of the men who have to fly these planes; laugh at the husbands whose wives are flying them. Pay attention to what we are talking about.

Will the government leader continue to stonewall on this issue, or will she come clean with Parliament and with Canada generally?

**Senator Carstairs:** Honourable senators, let me assure you that I bring to you each and every day the information that is provided to me. I do not hold it back. I do not change it.

**Senator Forrestall:** You do not question it either, do you?

**Senator Carstairs:** I do not limit it. To the very best of my ability, I give senators what I have.

**Some Hon. Senators:** Hear, hear!

REPLACEMENT OF SEA KING HELICOPTERS—BRIEFING OF SENATE  
IN COMMITTEE OF THE WHOLE

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, first, I want to commend Senator Carstairs for her graciousness yesterday in withdrawing a statement that I am sure was more a slip of the tongue than anything that was really intended. I understand that under constant pressure things are sometimes said which one regrets. The way she withdrew her statement shows her appreciation for the parliamentary system and I thank her again.

**Hon. Senators:** Hear, hear!

**Senator Lynch-Staunton:** Honourable senators, this whole issue of the helicopters and the development of the specs and the

request for proposal has, unfortunately, been highly charged politically. That in turn colours the whole debate. I commend Senator Carstairs again for passing on information, but she on her own cannot give all the details and all the answers to the questions being asked on this side. I am sure that questions are being raised in the minds of more than just caucus colleagues, however.

Would the Leader of the Government consider holding a briefing in the chamber, going into Committee of the Whole, to hear an explanation of how this whole process is being designed and where it is expected to lead? Hopefully, this could help dismiss the notion many of us share that the bidding process is being rigged to exclude one particular potential bidder. As yet, we are not convinced that this is not the case. Perhaps if we had a full briefing here or elsewhere, but preferably in Committee of the Whole, with the personnel who can answer our questions, we could come to a positive conclusion shared by both sides.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for his question and for his generosity. I will take his suggestion under serious consideration. I will get an answer to the honourable senator as soon as I can. By that, I mean by the next time the Senate sits.

[Translation]

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table in the house the delayed answers to four questions: a question raised on May 10, 2001, by Senator Kinsella, regarding the displacement of the United States on the Human Rights Commission; a question raised on May 6, 2001, by Senator LeBreton regarding the Immigration and Refugee Board of Canada; a question raised on May 10, 2001, by Senator Forrestall regarding the status of the Disaster Assistance Reaction Team (DART); and a question raised on May 8, 2001, by Senator Bolduc regarding the Auditor General and the appointment process.

## UNITED NATIONS

DISPLACEMENT OF UNITED STATES ON HUMAN RIGHTS  
COMMISSION

(Response to question raised by Hon. Noël A. Kinsella on May 10, 2001)

Elections to the United Nations Commission on Human Rights are conducted annually by secret vote among the fifty-four members of the Economic and Social Council, of which Canada is currently a member. One-third of the fifty-three seats on the Commission are open to election every year based on a regional allocation of seats. There is a separate voting ballot for each regional group. Therefore, candidates from different regional groups do not compete against one another.

For electoral purposes, European countries, Australia, Canada, New Zealand, Norway, the United States, and others (Andorra, Iceland, Israel, Liechtenstein, Malta, Monaco, San Marino, and Turkey) are members of the Western European and Other States Group (known as the "WEOG"). This year, three of the ten seats allocated to this group were open to election and four countries presented their candidacy: France, Austria, Sweden and the United States.

In assessing the WEOG candidacies, Canada looks at the experience of each candidate on the Commission. It also seeks to ensure a balanced representation within the WEOG among our European partners and our non-European partners.

Canada was surprised the United States was not re-elected to the Commission since it has a solid record in the promotion of international human rights. Canada and the United States have been longstanding partners in promoting international human rights in many fora, including at the Commission, and we fully hope and expect that our partnership with the United States on this issue will continue.

### IMMIGRATION AND REFUGEE BOARD

#### APPOINTMENTS—REQUEST FOR COPY OF TESTS FOR PROSPECTIVE BOARD MEMBERS

*(Response to question raised by Hon. Marjory LeBreton on May 16, 2001)*

#### QUESTION:

Can the honourable leader provide the names of the people who serve on the Ministerial Advisory Committee?

#### ANSWER:

The members of the Ministerial Advisory Committee, who select Immigration and Refugee Board members are:

The Honourable Justice Hugh Poulin

The Honourable Mr. Justice Hugh Poulin succeeded Mr. Gordon Fairweather as Chairperson of the Ministerial Advisory Committee (MAC) in 1997. In 1978, he was appointed to the bench, which is now the Superior Court of Justice (Ontario). At present, he serves as Chairman of the Pension Appeals Board.

Peter Showler

Mr. Peter Showler was appointed Chairperson of the Immigration and Refugee Board (IRB) in November 1999. Prior to this, he served as a member of the Board's Refugee Division, beginning in 1994. He was admitted to the Law Society of Upper Canada in 1985. From 1987 to 1994,

Mr. Showler was the Executive Director of Ottawa-Carleton Community Legal Services. He became a member of the MAC on his appointment as Chairperson of the IRB.

May Brown

Ms. May Brown was elected to the Vancouver City Council from 1976-1986 where she served as Alderman, Chairman of the Finance and Administration Committee, and as member of other committees. Ms. Brown has received many honours and awards, including the Order of Canada in 1986. She was appointed as a MAC member in 1998 and deals with all candidates from the West.

Terrie-Lynne Devonish

Ms. Terrie-Lynne Devonish is a lawyer with strong community commitment. She is a Member of the Canadian Bar Association, the Canadian Association of Black Lawyers, and a Member of the Board of Directors, African-Canadian Legal Clinic. Ms. Devonish has been a MAC member since February 2000 and deals with Ontario candidates.

Claude Lamarche

Mr. Claude Lamarche has worked in the human resources field since 1975. He was the Vice President of Human Resources at the Montfort Hospital from 1993 to 1998. He brings to the MAC, an extensive experience with organisations and committees supporting community concerns and activities. Mr. Lamarche has been a member of the MAC since 1996 and deals with candidates from the Ottawa and Atlantic regions.

Mary McLaughlin

Ms. Mary McLaughlin is a public affairs specialist and has held senior positions in the private, public and not-for-profit sectors. She has been extensively involved in community affairs, including holding the position of Chair of the Board of an Ontario university and she serves as a Governor of the Council for Canadian Unity. She is President of Excalibur Communications based in London, Ontario. Ms. McLaughlin has been a member of the MAC since 1997 and deals with candidates primarily from Ontario.

Marc K. Parson

Mr. Marc Parson is a Vice-President with the communication firm Hill & Knowlton, Ducharme, Perron Ltée., which is the Québec subsidiary of Hill & Knowlton International. Prior to that he was the senior partner and co-owner of Forum Communications and Public Affairs. Mr. Parson has been active in the communications/public affairs field since 1970. He was appointed a MAC member in 1997 and deals with candidates from Québec.



Smita Patel

Ms. Smita Patel possesses a Masters degree from the University of Bombay, India. She brings to the MAC extensive professional experience in working with individuals from diverse ethnic and economic backgrounds. Ms. Patel has been a MAC member since February 2000 and deals with Ontario candidates.

**QUESTION:**

As well, can she provide the actual test required of the people who wish to serve on this board so that we can see exactly what the test is all about?

**ANSWER:**

Ministerial records are not accessible under the *Access to Information Act*. In addition, the Treasury Board Secretariat manual on dealing with the right of access to records, chapter 2-4, page 8, states that ministerial records are not deemed to be under the control of the institution for purposes of the *Access to Information Act*.

The following standard letter, which is sent to candidates inviting them to the written test, gives more details on the competencies measured by the test.

Ministerial Advisory Committee on the Selection of Members of the Immigration and Refugee Board

Comité consultatif ministériel pour la nomination des commissaires de la Commission de l'immigration et du statut de réfugié

Canada Building  
344 Slater Street, 14th floor  
Ottawa, Ontario  
K1A 0K1

Dear:

This is in reference to your recent application for the position of Member of the Immigration and Refugee Board.

We are pleased to invite you to a written test on Friday, March 23, 2001 from 10:00 a.m. to 12:00 p.m. Upon completion of your test, I would ask that you place a copy of your curriculum vitae along with your test in the response envelope provided. Please report 15 minutes in advance to:

Immigration and Refugee Board  
74 Victoria Street, 6th floor  
Toronto, Ontario

If you have not already done so, please provide the names and phone numbers of two individuals who have known you in a professional manner and who can provide us with references, as required. Please send this information to me by mail or by fax to (613) 992-7773.

This test is designed to measure how well you demonstrate four of the competencies that are required of members of the Immigration and Refugee Board:

Written communication skills  
Analytical reasoning/thinking skills  
Decision making/judgment  
Action management  
These are defined as follows:

Written communication skills

Presents issues and decisions in writing with clarity, credibility and impact in varied forums. Adapts the content and style of communication as appropriate for different audiences.

Analytical reasoning/thinking skills

Keeps track of a large body of diverse information, both factual and legal. Switches from one source of information to another quickly and easily, distinguishes readily between essential and non-essential details. Organizes large amounts of information into a coherent picture; integrates new information and considers different options and submissions put forward.

Decision making/judgement

Evaluates information with an open mind, based on criteria established by legislation and jurisprudence. Assesses and determines credibility. Reaches sound decisions based on evidence, legislation and legally sound rationale.

Action management

Works quickly and efficiently in an environment characterized by a high caseload, tight time constraints and a demanding hearing schedule. Assimilates a large volume of information in a short time-frame. Effectively controls and moderates the hearing procedure.



If you have any questions concerning this test, please contact the Secretariat Services of the Ministerial Advisory Committee at (613) 947-2451.

Director,  
Secretariat Services

## NATIONAL DEFENCE

### STATUS OF DISASTER ASSISTANCE REACTION TEAM

*(Response to question raised by Hon. J. Michael Forrestall on May 10, 2001)*

The Disaster Assistance Response Team consists of a core team of about 195 Canadian Forces personnel. The DART is not a standing unit. Its members come from units across the country and are on short notice to move, allowing the team the ability to mobilize quickly.

Most of the DART's equipment is pre-positioned at CFB Trenton in a specially-constructed warehouse dedicated to DART operations. The warehouse contains approximately 36,000 sq. ft. of equipment stocked and maintained by a team of six personnel dedicated solely to this task.

At the conclusion of each mission, the DART must be returned to its deployable posture and level of readiness within seven days of returning to Canada. Equipment is immediately stock-checked, replenished and re-packed in preparation for the next deployment.

The DART is a proven CF resource, capable of deploying on short notice anywhere in the world. The creation of the DART has enhanced the government's ability to meet international and national requests for help, underscoring Canada's commitment to the international community in the area of humanitarian and disaster relief.

Funding is provided by DND to support the standing capacity for the DART. The incremental costs of a mission may be provided from CIDA's international humanitarian assistance budget and/or from the fiscal framework if approved by Cabinet.

## AUDITOR GENERAL

### APPOINTMENT PROCESS

*(Response to question raised by Hon. Roch Bolduc on May 8, 2001)*

The Governor in Council shall, by commission under the Great Seal, appoint a qualified auditor to be the officer called the Auditor General of Canada to hold office during good behaviour for a term of ten years.

The President of the Treasury Board has been leading the selection process, and chaired the Selection Committee established to identify Canada's next Auditor General.

The Selection Committee was comprised of the President of the Treasury Board (who served as Chair), the President of the Public Service Commission, the Secretary of the Treasury Board and Comptroller General of Canada and the Associate Secretary to the Cabinet and Deputy Clerk of the Privy Council, as well as the Chair of the Canadian Institute of Chartered Accountants, who also served as Chair of the Consultative Committee.

The position was advertised in the *Canada Gazette*, *The Globe and Mail* and *La Presse*, in order to make the selection process more open and transparent, and to attract the highest calibre candidates possible.

In addition, a Consultative Committee was established to assist the Selection Committee by conducting the first phase of the selection process, including consulting with Presidents of all Provincial Institutes of Chartered Accountants and managing partners of the major accounting firms, reviewing and assessing any applications received in response to the advertisements as well as identifying and screening the most credible candidates.

The Consultative Committee consisted of the Chair of the Canadian Institute of Chartered Accountants (a member of the Selection Committee), and senior former public servants and private sector representatives, including representatives from the accounting community.

The Selection Committee subsequently reviewed the recommendations made by the Consultative Committee.

Interviews of candidates for the position of Auditor General have taken place, and the Government will announce a new Auditor General in due course.

[English]

## ORDERS OF THE DAY

### FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS ACT

#### BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Rompkey, P.C., seconded by the Honourable Senator Finestone, P.C., for the second reading of Bill C-18, to amend the Federal-Provincial Fiscal Arrangements Act.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I rise to participate in the debate on Bill C-18. In doing so, I should like to compliment both Senator Rompkey and Senator Comeau for their excellent speeches. They helped explicate the bill as it relates to the immediate future. They also planted seeds in terms of other questions that this house may wish to delve into and the idea, perhaps, of separating the two issues, thereby dealing with the bill and its immediate application in the order of time and the issue of equalization as a larger question.

This whole issue speaks to the heart of our country and why we have been able to function successfully as a national family since 1867. Honourable senators demonstrate their ability to discuss the issues within the context of the needs of a national family, and it is heartening and encouraging to see the debate focussed that way and not modified by more rhetorical partisan considerations.

It was thought during the process of patriation of the Constitution that equalization was such a fundamental part of the essence of Canada that it should form a clause in the newly patriated Constitution. However, its origins pre-date the 1982 Constitution Act.

In fact, the Rowell-Sirois report in 1940 recommended a system of equalization payments, called the National Adjustment Grants, whereby the federal government would make special grants to poorer provinces. While this recommendation was not implemented in the form advanced by Rowell-Sirois, there was in fact an equalizing element in the federal-provincial fiscal arrangements between 1941 and 1957. Grants were made on a per capita basis that provided provinces with lower per capita tax yields with a larger share of revenues.

The 1957 equalization program, which in reality was the beginning of the program we are now discussing, was based on tax sharing agreements. Each province agreed to receive as its share a percentage of the actual tax yield from its residents through the federal personal income tax, the federal corporate income tax, and federal secession duties. These equalization payments were calculated to bring each province's share up to the per capita average of the two highest yield provinces at the time, which happened to have been British Columbia and Ontario. Over the years, this equalization formula has evolved until it is now based on nearly all government revenue sources.

While changes were made in the formula in 1967 and again in 1973, the most dramatic change came, as Senator Buchanan outlined for us, in 1982. At that time, the base standard of equalization was lowered to the average per capita yield of five representative provinces, that also being referred to by Senators Comeau and Rompkey. At the time, the five representative provinces were British Columbia, Saskatchewan, Manitoba, Ontario and Quebec. Therefore, if a province had a higher per capita fiscal capacity than the average of the five representative provinces, that province was not entitled to

equalization. The converse, of course, is also true. If a province had a lower per capita fiscal capacity than the average of the five representative provinces, that province is entitled to equalization. At present, the province which I represent, with other colleagues from New Brunswick, is one of those recipient provinces.

While the formula itself was not enshrined in the Constitution Act, 1982, the basic principle of equalization was entrenched, and Senator Comeau placed on the record for us the actual words of sections 36(1) and (2).

In order to put some meat on the bones of section 36, we can refer to the debates which took place at that time in 1980 and 1981. As Senator Comeau has pointed out, the current Prime Minister was then the Minister of Justice and played an important role in the enactment of the Constitution Act, 1982. In addition to the words of Mr. Chrétien, Justice Minister of the day, as quoted by Senator Comeau, there are other passages by the current Prime Minister that speak to the true meaning of equalization which I would like to place on the record.

Honourable senators, when speaking of this section in the Special Joint Committee on the Constitutional Amendment of 1980, the then Justice Minister, the current Prime Minister, stated:

It is an affirmation of the principle of equalization and a commitment of all governments that there should be equal opportunities in Canada for all Canadians.

Further:

So what we are trying to do here is to recognize the reason why we are in Canada, that is to make sure that when the situation is good or bad, we all are there to share both the advantages and inconveniences, sometimes of being together.

Later, in 1981, when debating the constitutional resolution in the House of Commons, the current Prime Minister stated as follows:

We shall enshrine in the Constitution the notion of sharing ...

Let me repeat that. Mr. Chrétien was stating that we, as Canadians, as a national family, are enshrining into the basic cornerstone document of our nation this beautiful idea of sharing. Why? Quoting further from Mr. Chrétien:

... because it is part of the fabric of Canada. There have been good years and lean years, depending on the occupation or the area in which one lived. What has made Canada a great country is the fact that when times were hard, the rich have always helped the poor. That is why we are still here together today.



I believe, honourable senators, that Bill C-18, which is now before us, violates both the wording and the obvious intent of section 36 of the Constitution Act, 1982. It also violates the commitment made to the provinces by the Prime Minister in September of last year to lift the cap off the equalization formula and allow entitlements to grow up to the level of growth in the economy. It ought not be limited.

In his presentation before the finance committee in the other place, the Minister of Finance from my province, the Honourable Norman Betts, was quite categorical about the effects of this bill on the financial capacity of the Atlantic provinces. Of course, he was particularly interested, as am I, in the province of New Brunswick and the adverse impact of the principle upon which this bill rests on the financial capacity of New Brunswick.

• (1420)

The Honourable Mr. Betts stated that the purpose of equalization is to level the playing field among the provinces. In his opinion — an opinion shared by the four Atlantic provinces — this bill, which places a ceiling on equalization payments, “violates the spirit and intent of the constitutional commitment by limiting the capacity of the program to achieve its fundamental objective.” Those are the words of Norman Betts, New Brunswick’s Minister of Finance.

Simply put, the position is that the imposition of an arbitrary ceiling level of \$10 billion is a break with past practices. This is not the way it has been done. The ceiling applies immediately after fiscal year 1999-2000 and, therefore, payments are restricted to a level below the normal economic growth projections.

As Mr. Betts explained, this is an arbitrary and substantial ratcheting down of the ceiling level. It results in diminished growth of revenues far below that which would occur without the imposition of the ceiling. In New Brunswick, in real dollars, this means a reduction of \$50 million from the equalization entitlement. Roads could be built, nurses hired and health care improved had it not been for the cap.

Honourable senators, it is the position of my province, and I believe a position shared by my colleagues from New Brunswick, that the cap should either be removed or set at some higher level that would not occasion such Draconian, practically applied results. As Finance Minister Betts has stated, the problem is this:

...the growth in expenditures for which we are constitutionally obliged to deliver is growing at a greater rate than our revenue capacity. The flip side is true at the federal level.

Honourable senators, I look forward to hearing further comments from honourable senators on Bill C-18 and listening to the federal Minister of Finance, Mr. Martin, and representatives of the various provinces when the bill is studied in the Standing Senate Committee on National Finance.

[ Senator Kinsella ]

**The Hon. the Speaker:** It was moved by the Honourable Senator Rompkey, seconded by the Honourable Senator Finestone, that this bill be read the second time.

Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Rompkey, bill referred to the Standing Senate Committee on National Finance.

## CUSTOMS ACT

BILL TO AMEND—REPORT OF COMMITTEE ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Banks, seconded by the Honourable Senator Wiebe, for the adoption of the fifth report of the Standing Senate Committee on National Finance (Bill S-23, to amend the Customs Act and to make related amendments to other Acts, with amendments) presented in the Senate on May 17, 2001.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, this item was adjourned by Senator Murray. I have been in touch with his office. He will speak at third reading; therefore, I think that we can consider the debate on report stage concluded.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.

REFERRED TO COMMITTEE

**The Hon. the Speaker:** When shall this bill, as amended, be read the third time?

On motion of Senator Banks, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

## IMPERIAL LIFE ASSURANCE COMPANY OF CANADA

PRIVATE BILL—THIRD READING

**Hon. Serge Joyal** moved the third reading of Bill S-27, to authorize The Imperial Life Assurance Company of Canada to apply to be continued as a company under the laws of the Province of Quebec.

Motion agreed to and bill read third time and passed.



## CERTAS DIRECT ASSURANCE COMPANY

### PRIVATE BILL—THIRD READING

**Hon. Serge Joyal** moved the third reading of Bill S-28, to authorize Certas Direct Insurance Company to apply to be continued as a company under the laws of the Province of Quebec.

Motion agreed to and bill read third time and passed.

## LIBRARY OF PARLIAMENT

### FIRST REPORT OF JOINT COMMITTEE ADOPTED

The Senate proceeded to consideration of the first report of the Standing Joint Committee on the Library of Parliament (order of reference), presented in the Senate on May 30, 2001.—(*Honourable Senator Bryden*).

**Hon. John G. Bryden** moved the adoption of the report.

Motion agreed to and report adopted.

## ASIAN HERITAGE

### MOTION TO DECLARE MAY AS MONTH OF RECOGNITION— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Poy, seconded by the Honourable Senator Carney, P.C.:

That May be recognized as Asian Heritage Month, given the important contributions of Asian Canadians to the settlement, growth and development of Canada, the diversity of the Asian community, and its present significance to this country.—(*Honourable Senator Finestone, P.C.*).

**Hon. Sheila Finestone:** Honourable senators, I am pleased to endorse the motion proposed by Senator Poy on May 29 pertaining to the creation of Asian Heritage Month in Canada. I believe it is important for this august body to consider such a proposal. I suggest this because it says something about the kind of country we are and the kind of country we wish to become. For Canada's early history of acceptance, of discrimination, of openness and of exclusion is not a pretty one. We made many errors of judgment. Fortunately, we have matured.

Our Charter of 1982 attests to our progress towards pluralism and our multicultural reality, yet we are still a work in progress.

I shall not restate some of the points made by Honourable Senators Poy and Carney, who referred to the valuable

contribution that Asian Canadians have made over the last 100 years, in the building of the CPR, in the development of the lumber and fishing industries, and through many small businesses, being the true entrepreneurs that they are.

It is important to draw our attention to another equally important dimension of this motion, that is, the future. Unlike some nations, few in the world today would ever think to accuse Canadians of being like ostriches that stick their heads in the sand. We are generally outward-looking and conscious of the world around us. Perhaps the reason we are where we are is because of all those little pink bits that so many of us saw as school children on our world maps showing the British Empire. Perhaps our outward looking nature is a result of our connection to Europe generally and Greco-Roman history and the Judeo-Christian tradition. Perhaps as colonials at one time, our knowledge of ourselves has been shaped by knowledge from other places and times. All that was great, it seemed to come from afar.

In one sense, little has changed. However, thanks to technology and our tremendous appetites for new knowledge, lines on the map are beginning to blur as once largely isolated cultures begin to exchange ideas and goods at increasingly rapid rates.

No doubt the phrase "think globally, act globally" has caught some of the essence of this fact. We are entering a new era of human history, an era where a global world view coexists with a continental, national, provincial and local world view within each and every individual.

We are seeing the dawn of a new psychological landscape where being a citizen of the world is more than just a catch phrase. It is part of a new mindscape, a mindscape that has embedded within it a global perspective on things. What does such a perspective reveal? It reveals a world inhabited by an estimated 6 billion people of whom 3.5 billion live in Asia. That means about three out of every five people in the world are of Asian descent. Of this number, one is from China and one from India. That is our reality.

By comparison, Canada is rather a tiny drop in the world's population bucket. Given the numbers involved, and given our outward-looking nature as Canadians, it is little statistical wonder that so many Canadians are opening up to and learning more about Asia.

For example, in the April 23 issue of *Time* magazine, a bellwether of mainstream North American culture, the magazine did a cover story on yoga as therapy. It reported that 15 million Americans participate in this ancient and mystical tradition, twice as many as five years ago, in part because they believe it has real medical benefits. That is 15 million people, or half the population of Canada, engaged in a practice that has its origins in India. That says something, I should think.

In an October 1997 issue of *Time*, the magazine did a cover story on Buddhism. Among other things, it was reported that Buddhism was the fastest growing religion in the United States, and people are asking questions and seeking answers outside the predominant Judeo-Christian tradition, and that never hurts.

The values espoused by the Buddhist tradition include the teaching and practice of love and compassion and nonviolence to all sentient beings. Sounds wholesome to me. What society would want to discourage that? However, just as every culture has a measure of justifiable pride in its heritage and tradition, history has shown that parochialism has often infected the minds of people with a measure of intolerance that has proven destructive. Whether it has been Orthodox Christians fighting Roman Christians, or Sunni Muslims fighting Sufi Muslims, or fundamentalist Sikhs fighting liberal Sikhs, the theme of rigidity or inflexibility of mind and heart are the same.

A recent race riot in Great Britain between British citizens of Indo-Asian descent and those of European descent demonstrated that even the most modern of democratic societies is not immune to the effects of intolerance on occasion. Enlarging our awareness of the riches every culture has to offer can prevent such things. I believe that the adoption of Asian Heritage Month is one positive way by which we can encourage all Canadians to discover the treasures within the Asian cultural salad.

I also believe that in the Canadian multicultural tradition, we respect those who choose to maintain and honour their ancestral home, history and culture. If spice is the variety of life, certainly Asian Canadians have brought a veritable cornucopia of epicurean delights to the tables of this country, be they from India, Thailand, Vietnam, Japan or China. Each of us, in our own small way, is not unlike Marco Polo when we venture to discover something new about our world, even if it is only at the end of our fork.

The most important lesson in this whole enterprise may be remembering that remaining open to other cultures is about remaining open to life and about fostering values that are conducive to the growth of human beings. That is one of the reasons we are here, honourable senators, to see if we can figure out ways to build on our society that will allow our descendants to flourish, rather than perish, to prosper rather than succumb, and to inspire rather than despair. Thus far, we have done pretty well. I want to build a world, as all of us do, where my grandchildren and yours totally "dig" diversity, as my children say.

To officially adopt Asian Heritage Month does not send merely a symbolic message. I really believe that it helps to guard against intolerance. Remember: "O Canada, we stand on guard for thee."

Let none of us forget that Canadians of Chinese origin also fought for Canada during World War II, at times in dangerous, behind-the-lines assignments, as specially trained commandos. No greater love hath a man than to lay down his life for his brother.

How has this kindness and love been repaid? With regrettable forms of discrimination in the past towards both Chinese and Japanese Canadians until 1947, two years after World War II. Yet out of such tragedies we have learned and we learn hard-won historical lessons. The suffering of Asian Canadians helped all Canadians to learn how to open our hearts and, in so doing, helped to break down the barriers that stood in the way of immigrants of other non-European nations.

In this age of the global village, we are beginning to see the fruits of an open heart. By enhancing our ability to engage in genuine cultural exchange and understanding within our own borders, Asian Canadians have also given all of Canada an important strategic advantage as we court growing Asian markets. In this sense, to love is to prosper.

History teaches us that we all need to guard against racial intolerance of all kinds. I believe the recognition of Asian Heritage Month will give us an important and proactive means of reminding all Canadians of the important contribution Asian Canadians have made and continue to make to our culture. Not only that, this month of recognition can serve to unite all Canadians of Asian descent into a collaborative, intra-Asian dialogue within Canada. In short, Asian Heritage Month cannot but help add to Canada's culture as one of the most diverse and enlightened in this world.

I am pleased to support this motion, honourable senators.

On motion of Senator Oliver, debate adjourned.

● (1440)

## THE NATIONAL ANTHEM

### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Poy calling the attention of the Senate to the national anthem.—(*Honourable Senator Pearson*).

**Hon. Landon Pearson:** Honourable senators, as a member of a foreign service family I have had innumerable occasions to sing our national anthem and have always done so with great pride. There is nothing like being abroad together with other Canadians to reinforce one's pride in one's nationality and shared national values.



However, as the years went by and my family of daughters increased, I became increasingly uncomfortable with the line in the English version of the anthem that commands true patriot love from all thy sons. I have a son and he is as patriotic as his sisters, but I am no one's son and neither are they. Therefore, in the last few years I have been quietly replacing "all thy sons" with "all of us." I would now like to do so out loud and for always.

I fully support Senator Poy in her efforts to make the necessary changes to recognize that all of us — men and women, boys and girls alike — rejoice in being Canadian.

On motion of Senator Spivak, debate adjourned.

## DEFENCE AND SECURITY

### COMMITTEE AUTHORIZED TO CONDUCT SURVEY OF MAJOR SECURITY AND DEFENCE ISSUES

**Hon. Colin Kenny**, pursuant to notice of May 29, 2001, moved:

That the Standing Senate Committee on Defence and Security be authorized to conduct an introductory survey of the major security and defence issues facing Canada with a view to preparing a detailed work plan for future comprehensive studies;

That the Committee report to the Senate no later than February 28, 2002, and that the Committee retain all powers necessary to publicize its findings until March 31, 2002; and

That the Committee be permitted, notwithstanding usual practices, to deposit any report with the Clerk of the Senate, if the Senate is not then sitting, and that the report be deemed to have been tabled in the Chamber.

Motion agreed to.

### COMMITTEE AUTHORIZED TO ENGAGE SERVICES

**Hon. Colin Kenny**, pursuant to notice of May 29, 2001, moved:

That the Standing Senate Committee on Defence and Security have power to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of its examination and consideration of such bills, subject-matters of bills and estimates as are referred to it.

Motion agreed to.

### COMMITTEE AUTHORIZED TO PERMIT ELECTRONIC COVERAGE

**Hon. Colin Kenny**, pursuant to notice of May 29, 2001, moved:

That the Standing Senate Committee on Defence and Security have power to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of its examination and consideration of such bills, subject-matters of bills and estimates as are referred to it.

Motion agreed to.

### MOTION TO AUTHORIZE COMMITTEE TO CHANGE NAME—REFERRED TO COMMITTEE

**Hon. Colin Kenny**, pursuant to notice of May 29, 2001, moved:

That 86(1)(r) of the *Rules of the Senate* be amended by replacing the words "Senate Committee on Defence and Security" with the words "Senate Committee on National Security and Defence".

**The Hon. the Speaker *pro tempore***: Is it your pleasure, honourable senators, to adopt the motion?

**Hon. John Lynch-Staunton (Leader of the Opposition)**: Could we have an explanation, please?

**Senator Kenny**: Honourable senators, I would be pleased to provide an explanation of my motion. This proposed change has been discussed with the chairman of the Rules Committee. Senator Austin asked me to inform you, on his behalf, that he endorses this change. The purpose of the change is to more accurately reflect the work and mandate of the committee which would study issues such as terrorism further to the work that was carried on by our former colleague, Senator Kelly. The committee's mandate also includes matters relating to police services and emergency preparedness. It was the feeling of the committee that this descriptor better fits the work the committee is doing.

**Hon. Douglas Roche**: Honourable senators, I support changing the name of the committee to the Senate Committee on National Security and Defence. My question for Senator Kenny refers to the motion in amendment to Motion No. 3 on the Order Paper dealing with the U.S. national missile defence system. The motion in amendment of Senator Finestone would refer the subject matter of the motion to the Standing Senate Committee on Defence and Security for study.

If Senator Kenny's motion is passed, would Senator Finestone's motion in amendment be now out of order because it contains the wrong name for the committee? I do not want us to run into a problem later because the motion in amendment contains the wrong name for the committee.



• (1450)

**Senator Kenny:** I do understand the honourable senator's point. If the Senate were to see fit to change the name of the committee, it would be my belief that the motion would still come to the committee, assuming the Senate saw fit to send it to the committee. I do not think that there would be any confusion in that regard. It is still the same group of people and it is still the same committee. I cannot see any reason that would stop the motion from coming forward if it were the wish of the Senate to have that happen.

**Senator Roche:** Honourable senators, I refer to the first of Senator Kenny's motions that he brought forward today, which sets out a work program. The new committee in question has now been authorized to conduct an introductory survey of the major security and defence issues facing Canada with a view to preparing a detailed work plan for future comprehensive study. That motion has been approved.

Thus, I ask Senator Kenny if the Senate were to see fit to send forward the subject matter of the motion on the missile defence system, could the Defence Committee work on that discrete issue at the same time? Could it proceed in tandem under the umbrella of the motion that has now been accepted for the work plan of the committee.

**Senator Kenny:** Honourable senators, the committee is the servant of the chamber. It will do whatever the chamber directs it to do. If the chamber sends that item to the committee, we will deal with it.

**Hon. Terry Stratton:** Honourable senators, I should like to address a question to the Honourable Senator Kenny.

The honourable senator said that Senator Austin, as Chair of the Standing Committee on Privileges, Standing Rules and Orders, has approved this motion. I do not recall that matter coming to the committee. Does the honourable senator know that it has come to the committee? Perhaps I missed the meeting.

**Senator Kenny:** I did not say that it went to the committee, honourable senators. I said that I had consulted with the chair of the committee. I was merely informing the Senate that one person on that committee was of the view that this was a worthwhile change.

**Senator Stratton:** The honourable senator is not speaking on behalf of the committee. He is speaking on behalf of himself.

**Senator Kenny:** That is exactly what I said.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, my question is a substantive one. What is intended by the phrase "national security"? My understanding of national security in the Canadian context would be at the level of the RCMP and municipal police departments. Is that the sense of national security being applied in this instance, or is it national security more in the American application of the term, which relates to international security?

**Senator Kenny:** Honourable senators, national security would include, as the Leader of the Opposition said, CSIS and the RCMP. It would include matters as were covered by our former

colleague Senator Kelly's special Senate committee. Those of us who served on that committee noticed that there was a convergence of these issues. Defence played a role, as did emergency preparedness and the police. All the players needed to come together in a variety of ways to deal with the issue. That is the reason for those words.

**Senator Kinsella:** Honourable senators, in order to expedite consideration of the matter, would Senator Kenny be open to having the motion referred to the Rules Committee? That would obviate the need for a motion to be made to amend this motion to that same effect. We, on this side, think that perhaps the Rules Committee should take a look at this matter.

**Senator Kenny:** Honourable senators, I would accept whatever the opposition wishes to do. The Deputy Chairman, Senator Forrestall, supported this, as did the members on the opposite side who were there.

In fact, I spoke with Senator Forrestall half an hour ago. He indicated that he would be here to speak in support of my motion. I regret that other matters occupy him. I had the impression that there had been discussions amongst senators on the other side of the chamber.

If that is not the case and my honourable friend wishes more discussion at the Rules Committee, we will live with that.

#### MOTION IN AMENDMENT

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I move that the motion be amended to provide that it be submitted to the Rules Committee for study and report back to the Senate.

**The Hon. the Speaker pro tempore:** Is it your pleasure, honourable senators to adopt the motion in amendment?

**Hon. Senators:** Agreed.

Motion in amendment agreed to.

[Translation]

#### ADJOURNMENT

Leave having been granted to revert to Government Notices of Motions:

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Tuesday, June 5, 2001, at 2 p.m.

**The Hon. the Speaker pro tempore:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until Tuesday, June 5, 2001, at 2 p.m.

**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(1st Session, 37th Parliament)**  
**Thursday, May 31, 2001**

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-2	An Act respecting marine liability, and to validate certain by-laws and regulations	01/01/31	01/01/31	—	—	—	01/01/31	01/05/10	6-01
S-3	An Act to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts	01/01/31	01/02/07	Transport and Communications	01/05/03 amended 01/05/09	3	01/05/10		
S-4	A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	01/01/31	01/02/07	Legal and Constitutional Affairs	01/03/29	0 + 1 at 3rd	01/04/26	01/05/10	4/01
S-5	An Act to amend the Blue Water Bridge Authority Act	01/01/31	01/02/07	Transport and Communications	01/03/01	0	01/03/12	01/05/10	3-01
S-11	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts	01/02/06	01/02/21	Banking, Trade and Commerce	01/04/05	17 + 1 at 3rd	01/05/02		
S-16	An Act to amend the Proceeds of Crime (Money Laundering) Act	01/02/20	01/03/01	Banking, Trade and Commerce	01/03/22	0	01/04/04		
S-17	An Act to amend the Patent Act	01/02/20	01/03/12	Banking, Trade and Commerce	01/04/05	0	01/05/01		
S-23	An Act to amend the Customs Act and to make related amendments to other Acts	01/03/22	01/05/03	National Finance	01/05/17	11			
S-24	An Act to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence	01/03/27	01/04/05	Aboriginal Peoples	01/05/10	0	01/05/15		

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-2	An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations	01/04/05	01/04/24	Social Affairs, Science and Technology	01/05/03	0	01/05/09	01-05/10	5-01
C-3	An Act to amend the Eldorado Nuclear Limited Reorganization and Divestiture Act and the Petro-Canada Public Participation Act	01/05/02	01/05/10	Energy, the Environment and Natural Resources					

C-4	An Act to establish a foundation to fund sustainable development technology	01/04/24	01/05/02	Energy, the Environment and Natural Resources			
C-7	An Act in respect of criminal justice for young persons and to amend and repeal other Acts	01/05/30					
C-8	An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions	01/04/03	01/04/25	Banking, Trade and Commerce	01/05/31	0	
C-9	An Act to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act	01/05/02	01/05/09	Legal and Constitutional Affairs			
C-12	An Act to amend the Judges Act and to amend another Act in consequence	01/04/24	01/05/09	Legal and Constitutional Affairs	01/05/17	0	01/05/29
C-13	An Act to amend the Excise Tax Act	01/04/24	01/05/01	Banking, Trade and Commerce			
C-14	An Act respecting shipping and navigation and to amend the Shipping Conferences Exemption Act, 1987 and other Acts	01/05/15	01/05/30	Transport and Communications			
C-17	An Act to amend the Budget Implementation Act, 1997 and the Financial Administration Act	01/05/15	01/05/30	National Finance			
C-18	An Act to amend the Federal-Provincial Fiscal Arrangements Act	01/05/09	01/05/31	National Finance			
C-20	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	01/03/21	01/03/27	—	—	—	01/03/28 01/03/30 1/01
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/03/21	01/03/27	—	—	—	01/03/28 01/03/30 2/01
C-22	An Act to amend the Income Tax Act, the Income Tax Application Rules, certain Acts related to the Income Tax Act, the Canada Pension Plan, the Customs Act, the Excise Tax Act, the Modernization of Benefits and Obligations Act and another Act related to the Excise Tax Act	01/05/15	01/05/30	Banking, Trade and Commerce			
C-26	An Act to amend the Customs Act, the Customs Tariff, the Excise Act, the Excise Tax Act and the Income Tax Act in respect of tobacco	01/05/15	01/05/17	Banking, Trade and Commerce			

## COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
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## SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	01/01/31	01/01/31	National Finance	01/03/28	5			
S-7	An Act to amend the Broadcasting Act (Sen. Finestone, P.C.)	01/01/31	01/02/07	Transport and Communications					
S-8	An Act to maintain the principles relating to the role of the Senate as established by the Constitution of Canada (Sen. Joyal, P.C.)	01/01/31	01/05/09	Privileges, Standing Rules and Orders					
S-9	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	01/01/31							
S-10	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	01/01/31	01/02/08	—	—	—	01/02/08		
S-12	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	01/02/07	01/03/27	Social Affairs, Science and Technology					
S-13	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	01/02/07	01/05/02	Privileges, Standing Rules and Orders					
S-14	An Act respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day (Sen. Lynch-Staunton)	01/02/07	01/02/20	Social Affairs, Science and Technology	01/04/26	0	01/05/01		
S-15	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	01/02/07	01/03/01	Energy, the Environment and Natural Resources	01/05/10	0	01/05/15		
S-18	An Act to Amend the Food and Drugs Act (clean drinking water) (Sen. Grafstein)	01/02/20	01/04/24	Social Affairs, Science and Technology (withdrawn 01/05/10)					
				Energy, the Environment and Natural Resources					
S-19	An Act to amend the Canada Transportation Act (Sen. Kirby)	01/02/21	01/05/17	Transport and Communications					
S-20	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	01/03/12							
S-21	An Act to guarantee the human right to privacy (Sen. Finestone, P.C.)	01/03/13		Subject-matter 01/04/26 Social Affairs, Science and Technology					

S-22	An Act to provide for the recognition of the <i>Canadien Horse</i> as the national horse of Canada (Sen. Murray, P.C.)	01/03/21
S-26	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	01/05/02

## PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-25	An Act to amend the Act of incorporation of the Conference of Mennonites in Canada (Sen. Krott)	01/03/29	01/04/04	Legal and Constitutional Affairs	01/04/26	1	01/05/02		
S-27	An Act to authorize The Imperial Life Assurance Company of Canada to apply to be continued as a company under the laws of the Province of Quebec (Sen. Joyal, P.C.)	01/05/17	01/05/29	Legal and Constitutional Affairs	01/05/31	0	01/05/31		
S-28	An Act to authorize Certas Direct Insurance Company to apply to be continued as a company under the laws of the Province of Quebec (Sen. Joyal, P.C.)	01/05/17	01/05/29	Legal and Constitutional Affairs	01/05/31	0	01/05/31		

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